

# Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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BEFORE SPECIAL MASTER:

HONORABLE CHARLES A. LEGGE (Ret.)

IN RE CATHODE RAY TUBE (CRT) ) Case No. C07-5944 SC  
ANTITRUST LITIGATION )  
 ) MDL NO. 1997  
 )  
 )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

\_\_\_\_\_  
Friday, November 12, 2010

REPORTED BY:

Ana M. Dub, RMR, CRR

CSR No. 7445

A P P E A R A N C E S

FOR THE DIRECT PURCHASER CLASS PLAINTIFFS:

SAVERI & SAVERI, INC.

BY: GUIDO SAVERI, ATTORNEY AT LAW

BY: R. ALEXANDER SAVERI, ATTORNEY AT LAW

BY: GEOFFREY C. RUSHING, ATTORNEY AT LAW

BY: CADIO ZIRPOLI, ATTORNEY AT LAW

705 Sansome Street

San Francisco, California 94111

Telephone: (415) 217-6810

E-mail: guido@saveri.com

E-mail: rick@saveri.com

E-mail: cadio@saveri.com

E-mail: grushing@saveri.com

and

HAUSFELD LLP

BY: MICHAEL P. LEHMANN, ATTORNEY AT LAW

44 Montgomery Street, Suite 3400

San Francisco, California 94104

Telephone: (415) 633-1908

E-mail: mlehmann@hausfeldllp.com

and

PEARSON SIMON WARSHAW PENNY LLP

BY: BRUCE L. SIMON, ATTORNEY AT LAW

44 Montgomery Street, Suite 2450

San Francisco, California 94104

Telephone: (415) 433-9000

E-mail: bsimon@pswplaw.com

FOR THE INDIRECT PURCHASER CLASS PLAINTIFFS:

ZELLE HOFMANN VOELBEL & MASON LLP

BY: DEMETRIUS X. LAMBRINOS, ATTORNEY AT LAW

44 Montgomery Street, Suite 3400

San Francisco, California 94104

Telephone: (415) 693-0770

E-mail: dlambrinos@zelle.com

and

A P P E A R A N C E S (Cont.)

SYLVIE K. KERN, ATTORNEY AT LAW  
Telephone: (415) 221-5763  
E-mail: sylviekern@yahoo.com

and

LOVELL STEWART HALEBIAN & JACOBSON, LLP  
BY: MERRICK SCOTT RAYLE, ATTORNEY AT LAW  
1502 South Prairie Avenue, Suite N  
Chicago, Illinois 60605  
Telephone: (415) 533-5316  
E-mail: msrayle@sbcglobal.net

and

COOPER & KIRKHAM, P.C.  
BY: JOHN D. BOGDANOV, ATTORNEY AT LAW  
357 Tehama Street, Second Floor  
San Francisco, California 94103  
Telephone: (415) 788-3030  
E-mail: jdb@coopkirk.com

and

TRUMP, ALIOTO, TRUMP & PRESCOTT  
BY: MARIO N. ALIOTO, ATTORNEY AT LAW  
BY: LAUREN C. RUSSELL, ATTORNEY AT LAW  
2280 Union Street  
San Francisco, California 94123  
Telephone: (415) 563-7200  
E-mail: malioto@tatp.com  
E-mail: laurenrussell@tatp.com

FOR CRAGO, INC., HAWEL A. HAWEL DBA CITY  
ELECTRONICS, ORION HOME SYSTEMS, LLC, PAULA CALL DBA  
POWAY-RANCHO BERNARDO, PRINCETON DISPLAY  
TECHNOLOGIES, INC., AND THE CLASS (MINNESOTA)

WEIL GOTSHAL & MANGES, LLP  
BY: DAVID YOHAI, ATTORNEY AT LAW  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
E-mail: david.yohai@weil.com

A P P E A R A N C E S (Cont.)

FOR CHUNGWA PICTURE TUBES, LTD.

GIBSON DUNN & CRUTCHER LLP  
BY: RACHEL S. BRASS, ATTORNEY AT LAW  
555 Mission Street, Suite 3000  
San Francisco, California 94105-2933  
Telephone: (415) 393-8200  
E-mail: rbrass@gibsondunn.com

FOR SAMSUNG ELECTRONICS AMERICA INC. AND SAMSUNG  
ELECTRONICS CO., LTD.:

O'MELVENY & MYERS LLP  
BY: PATRICK HEIN, ATTORNEY AT LAW  
Two Embarcadero Center, 28th Floor  
San Francisco, California 94111-3823  
Telephone: (415) 984-8951  
E-mail: phein@omm.com

FOR SAMSUNG ELECTRONICS AMERICA INC., SAMSUNG  
ELECTRONICS CO., LTD., AND SAMSUNG SDI AMERICA,  
INC.:

SHEPPARD MULLIN RICHTER & HAMPTON LLP  
BY: MICHAEL W. SCARBOROUGH, ATTORNEY AT LAW  
Four Embarcadero Center, 17th Floor  
San Francisco, California 94111-4109  
Telephone: (415) 434-9100  
E-mail: mscarborough@sheppardmullin.com

TELEPHONICALLY FOR TOSHIBA AMERICA ELECTRONIC  
COMPONENTS, TOSHIBA AMERICA INFORMATION SYSTEMS,  
TOSHIBA AMERICA, INC., TOSHIBA AMERICA CONSUMER  
PRODUCTS AND TOSHIBA CORPORATION:

WHITE & CASE  
BY: LUCIUS B. LAU, ATTORNEY AT LAW  
701 - 13th Street N.W.  
Suite 600 South  
Washington, D.C. 20005  
Telephone: (202) 626-3600  
E-mail: alau@whitecase.com

A P P E A R A N C E S (Cont.)

FOR HITACHI AMERICA, LTD., HITACHI ASIA, LTD.,  
HITACHI DISPLAYS, LTD., AND HITACHI, LTD.:

MORGAN, LEWIS & BOCKIUS LLP  
BY: DIANE L. WEBB, ATTORNEY AT LAW  
BY: JASON B. ALLEN, ATTORNEY AT LAW  
One Market Plaza  
Spear Street Tower  
San Francisco, California 94105-1126  
Telephone: (415) 442-1288  
E-mail: dwebb@morganlewis.com  
E-mail: jason.allen@morganlewis.com

FOR LG ELECTRONICS TAIWAN TAIPEI CO., LTD., LG  
ELECTRONICS U.S.A., INC., AND LG ELECTRONICS, INC.:

ARNOLD & PORTER LLP  
BY: BETH H. PARKER, ATTORNEY AT LAW  
One Embarcadero Center, 22nd Floor  
San Francisco, California 94111-3711  
Telephone: (415) 356-3051  
E-mail: Beth.Parker@aporter.com

TELEPHONICALLY FOR MT PICTURE DISPLAY CO., LTD.,  
MT PICTURE DISPLAY CORPORATION OF AMERICA,  
MATSUSHITA BATTERY CORPORATION OF AMERICA,  
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., PANASONIC  
CORPORATION, AND PANASONIC CORPORATION OF NORTH  
AMERICA:

DEWEY & LEBOEUF  
BY: JEFFREY L. KESSLER  
1301 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 259-8000  
E-mail: jkessler@dbllp.com

--oOo--

ALSO PRESENT:

Go Fujimoto

--oOo--

1 Friday, November 12, 2010; 2:03 P.M.

2 P R O C E E D I N G S

3 SPECIAL MASTER LEGGE: Just to begin here,  
4 we're here for the argument of several motions in  
5 the Cathode Ray Tube litigation.

6 We have quite an assemblage of people here  
7 in the conference room, and several of you have  
8 indicated your appearance by telephone.

9 Just a couple of procedural matters.

10 As you'll note here in the room that the  
11 table position has been flipped, and you'll manage  
12 to cope adequately with that fantastic change in the  
13 case, the reason being that we're having an  
14 arbitration conference here tomorrow that's being  
15 televised and going out on a direct stream. So the  
16 camera people wanted the camera down there facing  
17 this way. Hence, we changed the space of the table.

18 I think most all of you have been here  
19 before. You know where the coffee room is. You  
20 know where the coffee machine is, I should say. And  
21 you know where the rest rooms are. So we'll  
22 eliminate that.

23 Now, I do have a sign-up sheet to send  
24 down each side. If you have already filled out a  
25 sheet before, all we need is your name and who you

1 represent. If you have not filled out a sheet  
2 before, then I would like the personal information  
3 that's there on that sheet.

4 Okay. Now, some general observations  
5 before we get started here. I do appreciate the  
6 significance of these motions and the issues that  
7 they raise to the course and scope of the discovery.  
8 So I will do my best to be careful.

9 But also, we're now getting to the point  
10 in time where these kind of decisions have to be  
11 made. They cannot all be continuing to be deferred,  
12 as we've pretty much been doing up until this point  
13 in time.

14 I also appreciate the potential for  
15 precedent in this case which today's motions will  
16 bring or, I should say, the orders on today's  
17 motions will bring, the precedent that this is going  
18 to have on other defendants and other motions.

19 So, again, I will be careful in trying to  
20 make my rulings to be ones that can be adopted  
21 later, while at the same time, some room for  
22 differences in the positions of the parties with  
23 respect to them.

24 So if, in the course of saying something  
25 or talking about something, indicate I'm sweeping



1 with too broad a brush and going to be affecting too  
2 many people without adequately hearing their side's  
3 positions, please let me know.

4 Now, first of all, some old business. You  
5 have posted on Pacer two days ago the proposed order  
6 regarding the production of electronically stored  
7 information.

8 I compliment you on being able to work  
9 this out. I've not gone through and fly spec'd it.  
10 I just know, see several of the usual discovery  
11 issues that have been very nicely covered, and I  
12 appreciate your cooperation in that regard.

13 Now, this has been posted on Pacer. You  
14 have a signature line for just Judge Conti. So I'm  
15 not going to interject myself into it any further.  
16 And we'll just have to waive Judge Conti's signature  
17 on that stipulation. But hopefully the negotiation  
18 of that is behind us and implementation is then to  
19 come.

20 All right. Now, I'd like to, first of  
21 all, take up the defendants' motion to compel  
22 answers to discovery regarding the issues of CRT  
23 products.

24 Now, do I understand, Mr. Kessler, you're  
25 going to be arguing that motion from here?

1 MR. KESSLER: I am, your Honor, if that is  
2 acceptable to you. I'm in New York now.

3 SPECIAL MASTER LEGGE: Okay. Let me see  
4 if I can pick up the volume on this a little bit.  
5 Hang on a minute.

6 Well, I've got as much volume as I can get  
7 now. So would you go ahead, please, Mr. Kessler.

8 MR. KESSLER: I will. And if at any time  
9 you can't hear me, please let me know.

10 Unfortunately, I have a cold.

11 SPECIAL MASTER LEGGE: I was just about to  
12 comment on that.

13 MR. KESSLER: Yes. So that is impeding me  
14 somewhat.

15 SPECIAL MASTER LEGGE: Okay. Well, don't  
16 get too close to the microphone then.

17 MR. KESSLER: I don't think the microphone  
18 is the problem.

19 SPECIAL MASTER LEGGE: Well, I'll tell you  
20 what. Let me start out with a few thoughts I have  
21 on this thing because it might --

22 MR. KESSLER: Please.

23 SPECIAL MASTER LEGGE: -- save you some  
24 talking and all the rest of it.

25 Now, first of all, it's now been decided,

1 at at least the district court level, that the  
2 plaintiffs have adequately pled a conspiracy  
3 involving CRT products.

4 At this stage, the defendants are entitled  
5 to inquire into what evidence the plaintiffs have of  
6 that allegation.

7 So I think our major issue here is really  
8 when, is really when plaintiffs have to be  
9 forthcoming with that information.

10 MR. KESSLER: Very good, your Honor. I  
11 will focus on the --

12 SPECIAL MASTER LEGGE: Let me focus for a  
13 moment. Let me continue here a little monologue,  
14 and then I'll tell you when we're ready to hear you,  
15 Mr. Kessler.

16 MR. KESSLER: Okay.

17 SPECIAL MASTER LEGGE: I think it's quite  
18 clear that the requested discovery is relevant to  
19 the issue in the case.

20 So, again, I think the question is when  
21 the information has to be provided, particularly in  
22 relationship to the discovery on the same issue  
23 which the plaintiffs are now asking of the  
24 defendants.

25 Now, I do want to ask you, Mr. Kessler,

1       what are you going to do with the information if I  
2       order it produced immediately and you get -- your  
3       opinion, when you get the results, show that the  
4       plaintiffs do not have sufficient evidence to move  
5       forward in the case? You've raised the specter of a  
6       possible Rule 11 violation.

7               And I think most important from my point  
8       of view and from the point of view of the  
9       plaintiffs, also, is: What are you going to do  
10      then? You get the information. It looks like  
11      they've not got enough. What are you going to do  
12      about it?

13             Is there going to be an immediate motion  
14      for summary judgment? Are you going to make an  
15      immediate motion of a possible violation of Rule 11  
16      that might give you the equivalent of a summary  
17      judgment motion? Or is it just going to sit there  
18      until the rest of the discovery relevant to this  
19      issue gets finished?

20             So I would appreciate your responding to  
21      your intentions if you do get the information and  
22      you think it establishes what you want to establish,  
23      and that is, the plaintiffs don't have any evidence  
24      of CRT products being part of the case.

25             MR. KESSLER: Very good, your Honor.

1           Let me first say that we believe we're  
2           entitled to the information now. The time is now.

3           And we would not let that information --  
4           and let me explain how we would use that information  
5           and why I believe it will materially advance the  
6           progress of this case as well as substantially  
7           inform your Honor in deciding many of the other  
8           discovery issues that are pending before you.

9           First of all, under your Honor's  
10          hypothetical, which is that the responses indicated  
11          that there was not any basis for the allegation of a  
12          finished products conspiracy in the complaint -- so  
13          I'm accepting that hypothetical, which means that  
14          there was no basis -- I could tell you on behalf of  
15          Panasonic we would immediately bring a Rule 11  
16          motion.

17          By that, your Honor, what it means is we  
18          have to send a letter to plaintiffs, as you know  
19          under the rule, and ask them if they would not  
20          withdraw those allegations within 20 days, then we  
21          would file a Rule 11 motion.

22          If we had to file a Rule 11 motion, the  
23          relief we would seek would be to strike the  
24          allegations.

25          The consequence would be of that, if we

1 succeeded, which we believe is the proper  
2 consequence, is they would no longer be able to  
3 argue in discovery that there is some broad,  
4 gigantic fishing expedition of discovery they're  
5 entitled to over an alleged conspiracy in products  
6 which they had no business alleging in the first  
7 place.

8 We think this is exactly what Rule 11 was  
9 entitled to get at. We think it is exactly why the  
10 decisions we cited repeatedly cite Rule 11 concerns  
11 as a reason for ordering that these types of  
12 interrogatories be answered at the beginning of a  
13 case.

14 It's to prevent this from happening: a  
15 massive expansion of the case based on allegations  
16 that should not have been in the case in the first  
17 place.

18 So, yes, we would use the information  
19 immediately.

20 And this has nothing to do with summary  
21 judgment, your Honor, because what Rule 11 says is  
22 that if the allegation should not have been made,  
23 then there's no basis to seek discovery; there's no  
24 basis to open up the entire world and afflict these  
25 burdens and even go through a summary judgment

1 process. So it really is not summary judgment in  
2 any way, shape, or form.

3 But I would like to say, your Honor, let's  
4 say your hypothetical is overstated. Let's say that  
5 there's a little bit of evidence of something  
6 regarding this.

7 And by the way, I doubt there is. The  
8 reason I doubt there is, is because, number one, the  
9 only thing plaintiffs have cited so far are the  
10 documents given to the DOJ, without specification,  
11 and the foreign authorities. All those  
12 investigations only relate to allegations of a  
13 conspiracy in CRT. As the plaintiffs know, none of  
14 them relate to allegations of a finished products  
15 conspiracy.

16 And, second, they cite the documents from  
17 Chunghwa without specification. As your Honor  
18 knows, the plaintiff now knows, Chunghwa says it has  
19 no information about a finished products conspiracy.

20 (Court reporter clarifies.)

21 SPECIAL MASTER LEGGE: Evidence regarding  
22 a CRT products conspiracy.

23 MR. KESSLER: Yes. Chunghwa only claims  
24 to have evidence involving an alleged tubes  
25 conspiracy.

1           So, therefore, even if there was a little  
2 evidence of something -- and I can't imagine what  
3 that is, given what we know -- then that, I believe,  
4 your Honor, would greatly affect your determination  
5 of the balance of how much discovery, how far afield  
6 do the defendants have to go in searching for  
7 different things involving finished products as  
8 opposed to CRTs.

9           In other words, the relevant burden  
10 balance, in our view, would be greatly affected, in  
11 your Honor's judgment, if there was real evidence of  
12 such a conspiracy, no evidence of such a conspiracy,  
13 or a tiny bit of something that might arguably  
14 suggest something.

15           And it is not at all uncommon for judges,  
16 as your Honor knows, to look at those issues in  
17 deciding how much discovery to order.

18           And in this case, what we have, as you  
19 know, apart from the Hitachi motion -- but it's even  
20 more true for some of the other defendants -- we  
21 have discovery that they are seeking about finished  
22 products that matches the discovery they're seeking  
23 about CRTs.

24           So that we're talking about global  
25 discovery being sought going back 19 years,



1 involving totally different sales forces, totally  
2 different companies in some situations, totally  
3 different markets, totally different e-mail  
4 custodians, totally different groups of businesses.

5 And the question is: What basis do they  
6 have to do that?

7 And they've taken the position -- and this  
8 is what the letter is -- since we survived the  
9 motion to dismiss, we're entitled to everything.

10 And, your Honor, we do not believe that's  
11 what good case management requires. And under  
12 Rule 11, we think we're entitled to know: Do they  
13 have any basis for sending us on this expedition?

14 SPECIAL MASTER LEGGE: Okay. Now --

15 MR. KESSLER: The next comment, your  
16 Honor -- then I will be quiet and see if you have  
17 questions -- is that I want to be very clear, even  
18 if we totally prevail, including on Rule 11,  
19 including on this motion, and there's no basis for  
20 this, we, Panasonic, and I believe most of the other  
21 defendants, if not all, agree they are entitled to  
22 some discovery about finished CRT products.

23 So this is not leading to an issue that no  
24 discovery is required. The reason for that is the  
25 indirect purchasers, for example, are entitled to a

1 certain amount of sales data and pricing data  
2 involving finished CRT products because they use  
3 that to try to show the issues of pass-on relating  
4 to those damages.

5 And we have never contested that type of  
6 very limited, narrow discovery. That's number one.  
7 Okay?

8 I also -- so what this has to do, though,  
9 is the massive discovery in addition to that which  
10 they are seeking.

11 So the other point that's related to this,  
12 this is not an argument about standing at this  
13 point. You might hear from plaintiffs about the  
14 sugar case and whether, even if there is only a  
15 conspiracy on CRTs, not finished products, whether  
16 or not they have standing as direct purchasers or  
17 not. This motion, these discovery issues have  
18 nothing to do with that. That is a legal issue that  
19 will be decided later on at an appropriate point in  
20 the case.

21 So we're not challenging their standing in  
22 these motions to bring a case. What we're saying is  
23 they have no basis to put in an allegation, without  
24 any support, for a finished CRT products conspiracy  
25 and then use that to double, triple, quadruple the

1 size of their discovery request.

2 And we think that the interrogatories now  
3 should be granted now so we can use that information  
4 immediately for the purposes of presenting to your  
5 Honor a sound way of approaching this case from a  
6 case management standpoint.

7 Thank you very much. At this point, I'm  
8 available for your Honor's questions.

9 SPECIAL MASTER LEGGE: Well, in talking  
10 about case management, I assume you're saying that I  
11 do not need or should not give the plaintiffs any  
12 right to discovery against the defendants on the  
13 issue of CRT products until your discovery is  
14 completed and you decide whether you're going to  
15 make a Rule 11 motion or not.

16 MR. KESSLER: That's correct, your Honor,  
17 other than the types of CRT products discovery that  
18 we agree they're entitled to.

19 In other words, I just want to be clear  
20 that, again, that things like sales data and, you  
21 know, prices, I believe they're entitled to. We  
22 have no objection to that, and we've already made  
23 that clear.

24 We're talking about things like going  
25 overseas and searching e-mail files on people who

1 are involved in the sales of CRT finished products,  
2 that type of massive discovery.

3 We agree, your Honor, that the correct  
4 order is to first decide this contention motion  
5 which is before you now. And if you order it, let  
6 us evaluate what they respond and see if we bring a  
7 Rule 11 motion or not.

8 SPECIAL MASTER LEGGE: Okay. Now, one  
9 other question. Suppose the plaintiffs were to come  
10 up now, say, suppose one of your co-defendants said:  
11 "Oh, this isn't worth the battle. Here's all the  
12 information about CRT products that we have."

13 And you would say that I could not use  
14 that in evaluating a Rule 11 motion?

15 MR. KESSLER: It is irrelevant to whether  
16 they had a basis for going forward in the first  
17 place.

18 SPECIAL MASTER LEGGE: Yeah. Okay.

19 MR. KESSLER: I'm quite confident that  
20 under Ninth Circuit law, that you look at the  
21 information they had at the time they filed the  
22 complaint.

23 SPECIAL MASTER LEGGE: Yeah. Okay.

24 MR. KESSLER: Now, your Honor, I would say  
25 if somebody came forward with evidence in the

1 future -- okay? -- then, you know, maybe somebody  
2 else could file another case. But there would be no  
3 basis -- there'd be no basis for this case claim in  
4 this case.

5 SPECIAL MASTER LEGGE: So the point is,  
6 simply stated, you want information about what they  
7 knew at the time they filed the complaint. And if  
8 that, in your opinion, is not enough, you'll  
9 initiate Rule 11 procedures.

10 MR. KESSLER: That's right.

11 SPECIAL MASTER LEGGE: And you hope to get  
12 the allegations of CRT products stricken from the  
13 complaint, period?

14 MR. KESSLER: That is correct, your Honor.

15 SPECIAL MASTER LEGGE: Okay.

16 MR. KESSLER: And, in fact, that's why  
17 there's no burden to them, because they presumably  
18 know whatever universe they had at the time they  
19 filed their complaint. I'm not asking them to  
20 search for anything else or to supplement it or  
21 anything else. This is a very narrow, focused set  
22 of interrogatories we filed. Just what they had and  
23 used and relied upon at the time they made their  
24 allegation.

25 SPECIAL MASTER LEGGE: Okay. Now, let me

1 ask you one final -- well, I won't say it's final,  
2 but all I have in mind at the moment.

3 The order that you want, you generally  
4 define it on page 6 of your September 30th letter,  
5 simply that plaintiffs should be compelled to  
6 provide immediate and proper responses to  
7 defendants' finished CRT products discovery  
8 requests.

9 Now, you think that sort of generic thing  
10 is good enough to give precision and let the  
11 plaintiffs object and/or gives you enough to carry  
12 forward a program you want to carry forward?

13 MR. KESSLER: Well, I guess, your Honor,  
14 maybe I do need a little bit more precision because  
15 they have, as your Honor knows, filed answers.

16 And the problem I had, the reason why I  
17 believe their answers are not proper is because they  
18 don't identify anything with specificity.

19 And as your Honor knows, under Rule 33(d),  
20 if they're -- they have two choices in answering  
21 this interrogatory.

22 They can either give a narrative which  
23 mentions the specific pieces of evidence; or if  
24 they're alluding to documents, which is what they've  
25 done, you know, it is not adequate and proper to

1 say: All the documents submitted to the grand jury  
2 by defendants, all the documents produced by  
3 Chunghwa, or all the documents given to foreign  
4 authorities, all of which, as your Honor knows,  
5 constitutes tens of thousands of pages of documents  
6 which we have no way of sorting through or  
7 addressing.

8 They should be required, in their answer,  
9 if they're going to use documents, to identify by  
10 Bates number the specific --

11 SPECIAL MASTER LEGGE: Okay.

12 MR. KESSLER: -- you know, page --

13 SPECIAL MASTER LEGGE: I'm not --

14 MR. KESSLER: -- of the document which  
15 they think provides information to support this,  
16 which would then give us a basis to do a Rule 11  
17 assessment and decide if we're pursuing this or not.

18 SPECIAL MASTER LEGGE: Well, I was just  
19 thinking more about this question: Do we have a  
20 definition of CRT products somewhere in the  
21 complaint or the answers?

22 MR. KESSLER: Unfortunately, the answer --

23 SPECIAL MASTER LEGGE: Or is the use --

24 MR. KESSLER: The answer to that question  
25 is yes, but it's not a meaningful definition because

1        what they did in the complaint is they defined CRT  
2        products to include every type of CRT -- so that  
3        would be whether it's a CDT for monitors or a CPT  
4        for tubes -- and every type of finished product that  
5        uses a CDT or a CPT. So they've lumped them all  
6        together in the definition of "CRT products."

7                So I think the way we've defined our  
8        discovery, if your Honor looks at it, we were very  
9        careful. And I believe that's the way your Honor's  
10       order should read. Our discovery refers to finished  
11       products that incorporate either a CDT or a CPT.

12               Some of our discovery is directed to the  
13       finished products that incorporate a CPT, and some  
14       of our discovery is requested to the finished  
15       products that incorporate a CDT, because we wanted  
16       also to get that information divided that way if, in  
17       fact, there is any information.

18               MR. SIMON: Your Honor?

19               SPECIAL MASTER LEGGE: All right.  
20       Plaintiffs?

21               MR. SIMON: I'm going to make some overall  
22       comments on this very point that Mr. Kessler raised.

23               SPECIAL MASTER LEGGE: Okay. Why don't  
24       you come up here to the podium.

25               MR. SIMON: Sure.



1           SPECIAL MASTER LEGGE: Then you're a  
2           little bit closer to the phone here and, also,  
3           everybody can hear you.

4           MR. SIMON: Other of my colleagues,  
5           Mr. Rushing -- Bruce Simon -- are going to make  
6           comments on the specific things.

7           Mr. Kessler has made this argument now, as  
8           I count, three or four times to you. And I think  
9           Mr. Kessler thinks the more he says it, the more it  
10          actually becomes a fact in the case, when, in fact,  
11          the very question you asked -- What is the  
12          definition of "CRT products"? -- is defined in the  
13          complaint, but not the way that Mr. Kessler wants it  
14          defined.

15          It's defined the same way as it was  
16          defined in LCDs. It's defined the same way it's  
17          here.

18          SPECIAL MASTER LEGGE: Where is it defined  
19          here?

20          MR. SIMON: It's defined here in the  
21          complaint, in the paragraphs that you yourself  
22          considered --

23          SPECIAL MASTER LEGGE: Yeah. No, I  
24          under- --

25          MR. SIMON: -- in the class definition.

1           So it's defined in paragraph 1. It's  
2           defined in paragraphs 144 and 146. It's defined in  
3           the class allegations between paragraphs 85 and 92.

4           But what Mr. Kessler is doing, your Honor,  
5           is he's taking the definition and he's dissecting it  
6           and dismembering it and splitting it apart and  
7           ignoring both the legal and economic reality of what  
8           you upheld and what the court affirmed as being  
9           upheld on what the definition is.

10          For example, if I could give you an  
11          example, we discussed this last time. I have the  
12          transcript from the motion to dismiss hearing. And  
13          you asked the very same questions about what  
14          paragraphs in the complaint define CRT products.  
15          And I pointed to you, at that time, various  
16          paragraphs.

17          Two of the paragraphs, which are two of  
18          the paragraphs that Mr. Kessler does not use to  
19          define what CRT products are in the complaint, are  
20          paragraphs 144 and 146 which explain exactly how the  
21          finished products relate and are part of an  
22          overarching single conspiracy to fix the price as  
23          alleged in the complaint.

24          He cannot pull apart, your Honor, and  
25          sustain any type of motion, Rule 11 or otherwise,

1 the definition and then ask you to rule upon that  
2 because it ignores what we're alleging.

3 SPECIAL MASTER LEGGE: I'm going to make a  
4 ruling for him or against him, for you or against  
5 you. Okay? I think this is one where I don't have  
6 any choice. I've got to take a step, take a  
7 position.

8 Now, in defining what I'm ruling on,  
9 instead of using the term "CRT products," where do  
10 you think I should get my definition?

11 MR. SIMON: You should get it from the  
12 complaint.

13 SPECIAL MASTER LEGGE: All right.

14 MR. SIMON: And we allege it exactly like  
15 we allege in the complaint. And we allege that CRT  
16 products are both the tubes, both kinds, as well as  
17 the finished products.

18 SPECIAL MASTER LEGGE: Okay.

19 MR. SIMON: And that's the definition that  
20 was upheld by your Honor on motions to dismiss.  
21 That's the definition that was upheld in LCD.

22 SPECIAL MASTER LEGGE: Okay.

23 MR. SIMON: And as I argued to you last  
24 time, there's three independent reasons why that  
25 definition works, both from the legal aspect --

1 SPECIAL MASTER LEGGE: Don't bother.

2 MR. SIMON: Okay.

3 SPECIAL MASTER LEGGE: This is purely  
4 definitional to use in an order, favorable or  
5 unfavorable, to say what CRT products is or just use  
6 the generic term "CRT." Okay?

7 MR. SIMON: Okay.

8 SPECIAL MASTER LEGGE: Now, what about the  
9 substance of this motion?

10 MR. SIMON: Well, the part I wanted to  
11 direct you to is that he's proffering this as some  
12 sort of management of discovery, a motion to strike,  
13 balancing the burden. But he's proffering it under  
14 Rule 11, which has absolutely no basis here because  
15 the way "CRT products" is defined in the complaint,  
16 the only way he has a basis for any of those motions  
17 is to dissect that definition and pull them apart,  
18 which would be both economically and legally  
19 improper for him to do.

20 He's asking specifically: What is it that  
21 you have on a separate conspiracy related to CRT  
22 finished products? That's how he sets the question.

23 That's not the question. The question is,  
24 we have alleged one conspiracy where the tube price  
25 was set, that the tube price is the major component

1 in the finished product price and, by virtue of the  
2 way the conspiracy operated, it couldn't operate  
3 without affecting the price of the finished  
4 products.

5 If he --

6 SPECIAL MASTER LEGGE: So you're not  
7 arguing that there was a conspiracy about CRT  
8 products.

9 MR. SIMON: We are arguing --

10 SPECIAL MASTER LEGGE: You are arguing  
11 that the conspiracy of CRTs had an impact on the  
12 price of CRTs?

13 MR. SIMON: We are arguing that you could  
14 not have a conspiracy on the tubes without having a  
15 conspiracy on the finished products.

16 We are not saying there were separate  
17 meetings on finished products. We're not saying  
18 that the finished products were separately part of a  
19 conspiracy. It was part of one conspiracy which, by  
20 necessity, had to have an impact on the finished  
21 products.

22 And if I can refer you for a moment, your  
23 Honor, just while you're thinking about that, to the  
24 paragraphs in the complaint, which we talked about  
25 now three or four times, paragraph 144.

1 And these allegations are like the  
2 allegations in LCD that were sustained, are the  
3 allegations that you relied upon in sustaining this  
4 complaint.

5 And at paragraph 144, the relevant part of  
6 that says:

7 Defendants also considered the  
8 internal pricing of products  
9 containing CRTs in agreeing upon the  
10 prices at which CRTs were set.

11 And then in paragraph 146, it says:

12 Defendants base these  
13 determinations on what the market  
14 would look like after jointly  
15 analyzing anticipated supply and  
16 demand. The analysis often included  
17 consideration of downstream prices  
18 for televisions, computer monitors,  
19 or similar products and how they  
20 would affect the price ranges being  
21 collusively set.

22 That is not saying what Mr. Kessler is  
23 saying and trying to get you to buy into in terms of  
24 an allegation of a separate conspiracy.

25 What that is saying is, as part of the

1 overall conspiracy, we fixed the price of the tube;  
2 and by necessity, we have to take into consideration  
3 and consider what the price effect will be on the  
4 finished product.

5 And since the tube is the majority of the  
6 cost of the finished product, you can't have one  
7 without the other. It can't be dissected. It can't  
8 be separated.

9 And Mr. Kessler, from the beginning of the  
10 case, and defendants, from the beginning of the  
11 case, have been trying to convince you, without  
12 success -- and they've been unsuccessful in every  
13 other case -- to take these two things apart.

14 And now he's advanced it to the point of  
15 saying: Well, it could be susceptible to Rule 11.  
16 Maybe, depending on what we see.

17 That's not a Rule 11 motion. That's a  
18 summary judgment motion. We can't possibly dissect  
19 the class definition before we get to the point  
20 where we know what the discovery record will show in  
21 this case.

22 And that is also what Judge Conti said  
23 when we went back to him on the motions to dismiss  
24 in the last case management conference, where he  
25 sustained your Honor's order on the motions to

1 dismiss.

2 So what Mr. Kessler is trying to do is  
3 craft a remedy, which is really not within the rules  
4 at all, by combining a Rule 11 motion with some sort  
5 of balancing on discovery with a summary judgment  
6 motion to strike allegations out of a complaint  
7 before we have the discovery to determine whether  
8 those allegations can be determined on the merits.

9 He would be striking -- it would be a  
10 drive-by striking of allegations without knowing  
11 what the merits are. Exactly what the rules say we  
12 shouldn't be doing. And --

13 SPECIAL MASTER LEGGE: Are you contending  
14 that there is a separate conspiracy as to CRT  
15 products?

16 MR. SIMON: Finished products?

17 SPECIAL MASTER LEGGE: Finished products.

18 MR. SIMON: No. We are talking about one  
19 conspiracy as to both. And the documents in this  
20 case, which will be like the documents in LCD, will  
21 show that you can't have a conspiracy on the tubes  
22 without considering what the impact would be on the  
23 finished products.

24 SPECIAL MASTER LEGGE: I understand the  
25 argument you're making. I understand. But I just



1 want to be clear.

2 You're not claiming there are two  
3 conspiracies.

4 MR. SIMON: We are not.

5 SPECIAL MASTER LEGGE: You're claiming  
6 there's one conspiracy.

7 And the significance of the finished  
8 product being mentioned is that a conspiracy on the  
9 price of the component tubes will necessarily affect  
10 the prices at which the finished products are sold?

11 MR. SIMON: And was part of the  
12 consideration in the meetings that we allege in the  
13 complaint.

14 SPECIAL MASTER LEGGE: All right. Add  
15 that. Add that.

16 MR. SIMON: Right. So, therefore, you  
17 can't do one without the other. And to dissect it  
18 at this point, the way Mr. Kessler and defendants  
19 are requesting you to do, would be to take the case  
20 apart.

21 And we already talked to you at the motion  
22 to dismiss about Continental Oar and the cases that  
23 say that you don't dismember the complaint at this  
24 point in time.

25 So, to summarize, you should rely on the

1 definition in the complaint, but not as Mr. Kessler  
2 frames it, as it's actually framed in the complaint.  
3 You should not dissect it at this time.

4 SPECIAL MASTER LEGGE: Okay.

5 MR. SIMON: And it should be subject to  
6 merits discovery before we get to the point that  
7 Mr. Kessler is trying to get you to.

8 SPECIAL MASTER LEGGE: All right. What  
9 you're saying is, suppose I were to say "You've got  
10 to produce everything you know about a" -- "I'll  
11 call it a finished products conspiracy or a  
12 conspiracy affecting finished products," is that  
13 coextensive with all the rest of the discovery that  
14 has got to be done?

15 MR. SIMON: Right.

16 SPECIAL MASTER LEGGE: All right. I  
17 understand what you're saying.

18 All right.

19 MR. RUSHING: Well, your Honor --

20 SPECIAL MASTER LEGGE: Yeah.

21 MR. RUSHING: -- Jeff Rushing on behalf of  
22 the direct purchasers.

23 I'm prepared to address the specifics of  
24 the contention interrogatory --

25 MR. KESSLER: Excuse me?

1 MR. RUSHING: -- issue.

2 SPECIAL MASTER LEGGE: Talk a little  
3 louder, please.

4 MR. RUSHING: I'm prepared to address -- I  
5 mean, Mr. Simon was addressing the sort of  
6 overarching question --

7 SPECIAL MASTER LEGGE: Yes. All right.

8 MR. RUSHING: -- about the nature of the  
9 conspiracy we are alleging here, and I believe he's  
10 done so, which does affect the analysis, we believe.

11 But as far as the nuts and bolts of the  
12 contention interrogatory motion, I'm prepared to  
13 address those.

14 SPECIAL MASTER LEGGE: Meaning what? I  
15 don't understand what you mean.

16 MR. RUSHING: Well, I'd like to respond to  
17 Mr. Kessler's argument, some of the other aspects of  
18 his argument.

19 SPECIAL MASTER LEGGE: All right. Okay.  
20 Go ahead.

21 MR. RUSHING: Would you like me at  
22 the . . .

23 SPECIAL MASTER LEGGE: Well, wherever  
24 you -- I think -- can all the rest of you in the  
25 room hear him?

1 MR. RUSHING: Let me -- I'll come around.

2 MR. KESSLER: I think he needs to be a  
3 little closer to the microphone.

4 SPECIAL MASTER LEGGE: Yeah, he does. He  
5 is moving to the podium right now.

6 MR. SIMON: I think what he's going to  
7 address, your Honor, is the appropriateness of  
8 contention interrogatories at the timing at this  
9 point right now.

10 MR. RUSHING: Yes, your Honor. I'm here  
11 to -- I mean, we agree that the question here is one  
12 of --

13 SPECIAL MASTER LEGGE: Oh, I did it again.

14 (Recess taken from 2:37 P.M. to  
15 2:43 P.M.)

16 SPECIAL MASTER LEGGE: Good afternoon,  
17 Counsel. I'm sorry. We had a disruption in the  
18 telephone service here, partially due to me and  
19 partially due to some less-than-perfect equipment.  
20 So we're back online now.

21 Are you folks still there?

22 MR. KESSLER: Your Honor, we're back now.  
23 I think we lost contact, at least we did here, just  
24 before the second plaintiffs' counsel was about to  
25 speak.

1           SPECIAL MASTER LEGGE: Okay. That's what  
2           caused our problem. I tried to move the speaker  
3           here, the microphone closer to the podium, and  
4           that's what resulted in our problem. So you did not  
5           miss anything substantively.

6           So, Counsel, would you proceed ahead,  
7           please.

8           MR. RUSHING: Thank you, your Honor.

9           Jeffrey Rushing on behalf of the direct  
10          purchaser plaintiffs.

11          Your Honor, the questions you directed at  
12          Mr. Kessler at beginning of his argument, let me  
13          start there.

14          We agree that this is a question of  
15          timing. We don't take the position that we should  
16          not ever have to provide a description of the basis  
17          of our allegations to the defendants.

18          We do contend that we shouldn't have to do  
19          it now, before discovery has meaningfully  
20          progressed, at a time when we are stayed, discovery  
21          is stayed and our hands are, to a large degree, tied  
22          in terms of our ability to investigate, further  
23          investigate the allegations that we have made in the  
24          complaint and that, as you noted, have been upheld  
25          by you, the Special Master, and the Court against

1 virtually identical attacks that the defendants  
2 mount today.

3 Mr. Kessler is correct in that in order  
4 for the defendants to prevail on this motion, they  
5 must show that requiring early answers, early  
6 answers to this contention discovery, as opposed to  
7 answers at some later date, after substantial  
8 completion of discovery, but that requiring early  
9 answers will materially advance the case.

10 The case law is clear. In general, that  
11 is not the case. In general, contention discovery  
12 is disfavored early in the case. And the reasons  
13 it's disfavored is because there's no point to it;  
14 it doesn't accomplish anything.

15 As Judge Seeborg said in eBay, a case  
16 which we think is very similar to this -- it's an  
17 antitrust case in which contention discovery was  
18 propounded early in the case as to the big issues in  
19 the case. Judge Seeborg said:

20 Courts using their Rule 33(a)(2)  
21 discretion generally disfavor  
22 contention interrogatories asked  
23 before discovery is undertaken. In  
24 fact, courts tend to deny contention  
25 interrogatories filed before

1           substantial discovery has taken place  
2           but grant them if discovery almost is  
3           complete.

4           So that's the issue, is timing. And we  
5           have some other issues with contention discovery  
6           and/or -- that has been propounded. We're focusing  
7           on the timing here.

8           We also believe that there are issues of  
9           duplication.

10          SPECIAL MASTER LEGGE: Of what?

11          MR. RUSHING: Duplication. I mean, there  
12          are approximately, I think, 20 requests at issue  
13          today. There are a number -- there are 15 or 20  
14          more that have been propounded in defendants' second  
15          round of discovery. Defendants, no doubt, are ready  
16          to propound hundreds more if they get the green  
17          light here.

18          And so we will certainly have something to  
19          say --

20          SPECIAL MASTER LEGGE: Well, I thought I  
21          was dealing only with the interrogatories that were  
22          identified in Footnote 1 of the motion of  
23          September 3rd from defendants.

24          MR. RUSHING: I think that is correct.  
25          Those are the motions -- that is the discovery

1       formally at issue today.

2               But I would suggest that there would be a  
3       host of additional requests propounded were the  
4       Court to green light contention discovery at this  
5       point --

6               SPECIAL MASTER LEGGE:   Not on --

7               MR. RUSHING:   -- in the game.

8               SPECIAL MASTER LEGGE:   Not on this issue.

9       I mean, this . . .

10              MR. RUSHING:   Well, I --

11              SPECIAL MASTER LEGGE:   These motions will  
12       determine whether there will be, I'll just call it,  
13       immediate discovery on the issue of CRT products.

14              MR. RUSHING:   Well --

15              SPECIAL MASTER LEGGE:   So it's going to be  
16       yes or no.   If it's yes, they get it, nobody's going  
17       to need any more motions.   If it's no, they don't  
18       get it, there's not going to be any more motions.  
19       So I --

20              MR. RUSHING:   Well, that's what I'm  
21       saying.   If that's --

22              SPECIAL MASTER LEGGE:   I think I'm dealing  
23       with a finite number here.

24              Okay.   Go ahead.

25              MR. RUSHING:   Well, my point is simply



1       that to the extent -- yes, we are dealing with 15 or  
2       20 interrogatories directed at a single subject  
3       today.

4               SPECIAL MASTER LEGGE: Yeah, right.

5               MR. RUSHING: These interrogatories,  
6       themselves, are duplicative, I would submit.

7               And they are also -- there are some  
8       issues -- for example, they call for, quote, all  
9       facts in support of a -- of a contention they ask if  
10      we are making. Those, as a matter of form, on their  
11      face -- Judge Seeborg has held in eBay and a JAMS  
12      colleague of yours, your Honor, Martin Quinn, has  
13      recently held that similar contention  
14      interrogatories are, on their face, invalid in the  
15      LCD case.

16              So leaving aside those kinds of concerns,  
17      your Honor, for the moment, the question is timing.

18              And what I principally --

19              SPECIAL MASTER LEGGE: And your position  
20      is --

21              MR. RUSHING: Our position --

22              SPECIAL MASTER LEGGE: -- that the  
23      information should be produced as a part of the  
24      other merits discovery that's going to go on in the  
25      case about the alleged conspiracy and its

1 consequences generally.

2 MR. RUSHING: Our position -- yes, that we  
3 should provide responses to appropriate contention  
4 discovery at a time when substantial discovery is  
5 complete.

6 SPECIAL MASTER LEGGE: Okay.

7 MR. RUSHING: Then -- I mean, the point of  
8 such contention discovery is to allow the other side  
9 to prepare for trial, to understand the issues at  
10 trial, to understand the issues presented for  
11 dispositive motions, trial, et cetera.

12 SPECIAL MASTER LEGGE: I understand. But  
13 the position that the defendants are taking is,  
14 where they have one issue that they believe can be  
15 isolated and where they can obtain information which  
16 will materially impact the remainder of the case,  
17 that it's good management and good law to do it now.

18 MR. RUSHING: Well, and we disagree with  
19 that, your Honor. And Mr. Kessler is wrong on a  
20 couple of different points.

21 He focuses -- on the one hand, he admits  
22 that their aim in this case is to get a ruling -- in  
23 this instance is to get a ruling on the merits,  
24 effectively on the merits that removes the finished  
25 product issue from the case and to get that ruling

1 without providing plaintiffs the benefit of  
2 meaningful discovery into their allegations.

3 SPECIAL MASTER LEGGE: Yes, that's right.

4 MR. RUSHING: That's his point.

5 SPECIAL MASTER LEGGE: Well --

6 MR. RUSHING: And with respect, your  
7 Honor, we would submit that that completely turns  
8 the litigation process on its head.

9 SPECIAL MASTER LEGGE: Well, it's an  
10 entire focus on Rule 11.

11 MR. RUSHING: Yes, your Honor.

12 SPECIAL MASTER LEGGE: That is, if you  
13 didn't have information at the time, you had no  
14 basis for doing it, you shouldn't have done it and,  
15 as a consequence, it should be stricken.

16 MR. RUSHING: Well, and --

17 SPECIAL MASTER LEGGE: That's his  
18 position.

19 MR. RUSHING: Yes, that is his position,  
20 and he's incorrect, and let me address that.

21 Mr. Kessler is incorrect, first of all, as  
22 to the law of Rule 11 in the Ninth Circuit. And  
23 we've cited a case in our brief which Mr. Kessler  
24 didn't address. It's the Keegan case which makes  
25 clear that there are two parts to a Rule 11 inquiry.

1           The first part is that the pleading or the  
2           contention at issue must be objectively frivolous.  
3           And the second -- the second requirement is that  
4           there must not have been adequate information at the  
5           time of the filing of the complaint, for example, at  
6           the time the contention was made. So it's a two  
7           part -- it's a two part question.

8           The discovery that the plaintiffs -- or  
9           excuse me -- that the defendants are seeking here,  
10          they assert that it goes -- that all they want to  
11          know is what we knew at the time the consolidated  
12          amended complaints were filed.

13          That, as a matter of law, cannot establish  
14          a Rule 11 -- even assuming, even assuming that there  
15          isn't -- we did not have an adequate basis for what  
16          we said, which is an enormous assumption which we  
17          strenuously disagree with, but even assuming, for  
18          the sake of argument, that that's the case, simply  
19          showing that we did not have the proper basis for  
20          our claim at the time it was filed is not enough,  
21          under the Keegan case and well established Ninth  
22          Circuit authority, to establish a Rule 11 violation.

23          So he can't do -- he won't be able to do  
24          what he says he wants to do even if he gets  
25          everything he wants from us on this motion because

1 the Court would still be required to make a finding  
2 that the allegation objectively lacks merit. And  
3 everything's relevant there, your Honor, including  
4 any -- any information -- including information  
5 obtained after the complaint was filed.

6 That is the holding of the Keegan case.  
7 In that case, the Court did find that the  
8 attorneys --

9 SPECIAL MASTER LEGGE: I'm looking at your  
10 brief here. Where is the Keegan case? You've got a  
11 whole bunch of them.

12 MR. LEHMANN: It's pages 9 and 10, your  
13 Honor.

14 SPECIAL MASTER LEGGE: 9 and 10.

15 Okay. I see it here. Keegan Management  
16 Securities Litigation, bottom of page 9, top of  
17 page 10.

18 Okay. Thank you.

19 MR. RUSHING: That is a case in which the  
20 Court granted summary judgment and then subsequently  
21 found that the case had been filed without adequate  
22 investigation and then imposed sanctions on the  
23 plaintiffs' counsel.

24 The Ninth Circuit reversed that finding  
25 because in the course of denying -- in the course of

1 granting summary judgment, the Court noted and found  
2 that, yes, while summary judgment -- it was  
3 appropriate to grant summary judgment, the evidence  
4 that the plaintiffs had produced which they had  
5 obtained in discovery showed that they had a  
6 colorable claim, showed that the claim was not  
7 frivolous. And the Ninth Circuit said there's no  
8 Rule 11 violation in that circumstance.

9 So it's a two-part test. The case has to  
10 be objectively frivolous, and it also has to be  
11 filed without adequate investigation.

12 So even assuming the hypothetical that you  
13 posed -- your Honor posed earlier, even assuming  
14 that events played out that way, we still could not  
15 have a Rule 11 -- could not find a Rule 11 violation  
16 in the short-term here, as Mr. Kessler proposes.

17 SPECIAL MASTER LEGGE: Okay.

18 MR. RUSHING: In addition, in addition,  
19 the defendants -- this procedure that Mr. Kessler  
20 proposes, that everything in this action comes to a  
21 screeching halt so that the defendants can conduct a  
22 Rule 11 inquiry --

23 SPECIAL MASTER LEGGE: Well, everything is  
24 not going to come to a screeching halt.

25 MR. RUSHING: Well --

1 SPECIAL MASTER LEGGE: Even I agree with  
2 their motion, it's not going to come to a  
3 screeching --

4 MR. RUSHING: Well, your Honor --

5 SPECIAL MASTER LEGGE: -- halt.

6 Discovery is going to proceed ahead. And  
7 I will rule on these documents matters as soon as I  
8 can, in the next few days. And you're going to be  
9 producing and they're going to be producing.

10 MR. RUSHING: Well, your Honor --

11 SPECIAL MASTER LEGGE: The depositions  
12 will start around the 1st of March. It's not going  
13 to come to a screeching halt.

14 MR. RUSHING: Well, your Honor, I was  
15 addressing -- I wasn't addressing something I  
16 thought your Honor was inclined to do. I was  
17 addressing the procedure that Mr. Kessler proposes.

18 I mean, your Honor asked Mr. Kessler what  
19 would be the sequence of events. And his answer was  
20 discovery would halt on the issue of --

21 SPECIAL MASTER LEGGE: Well, I don't know  
22 whether he said that or not.

23 MR. RUSHING: Well, I think he did.

24 SPECIAL MASTER LEGGE: Go ahead.

25 MR. RUSHING: Maybe he can address that

1       when I'm finished. But I believe that's what he  
2       said.

3               SPECIAL MASTER LEGGE: I'm not going to  
4       stop everything, believe me.

5               MR. RUSHING: All right. And to finish  
6       the point, to the extent that's their contention,  
7       they have cited no authority in their papers and --

8               SPECIAL MASTER LEGGE: I told you --

9               MR. RUSHING: -- to say that that's a  
10      proper procedure.

11              SPECIAL MASTER LEGGE: -- I'm not going to  
12      stop everything. So you don't need to argue about  
13      it anymore.

14              MR. RUSHING: Okay. All right. Now, let  
15      me just -- just a couple more things here, your  
16      Honor.

17              Mr. Kessler also focuses on discovery, and  
18      he says it's important for us to respond to this  
19      discovery so that your Honor and others, I  
20      suppose -- because it will inform the question of  
21      how much discovery into finished products do we get.

22              And, I mean, the arguments in our brief, I  
23      think, are apt. That presupposes that we have to  
24      make some sort of showing, a threshold showing  
25      before we're entitled to discovery into the



1       allegations of our complaint.

2               That is not the law, and we set forth in  
3       our brief plainly that that's simply not the law.  
4       And we're going to hear more about that, I think, on  
5       some of these Hitachi briefs.

6               But an additional point here that I think  
7       is very important, the events on the ground have  
8       outstripped this motion, your Honor. We are engaged  
9       in meeting -- pursuant to your Honor's orders,  
10      meet-and-confer conferences and discussions with  
11      defendants on this.

12              And, in general -- there are some  
13      exceptions, Hitachi being one -- but, in general, we  
14      are making significant progress towards resolving  
15      the very issue of the scope of finished product  
16      discovery on the basis of, as we've said earlier,  
17      identifying custodians and narrowing the search and  
18      the scope of defendants' search, based on this  
19      custodian-based approach. We're well down the road  
20      on this with most defendants.

21              We have not reached a final agreement, I  
22      don't believe, with any defendants; but -- and it  
23      may be that we do not reach agreements with some;  
24      but I would predict, without knowing the future,  
25      that this process will bear fruit and that the

1 parties, at least most of them will be able to  
2 resolve their --

3 SPECIAL MASTER LEGGE: What you're talking  
4 about is, you're negotiating about their production  
5 of documents to you?

6 MR. RUSHING: Yes.

7 SPECIAL MASTER LEGGE: Well, this motion  
8 is dealing with your obligation to provide documents  
9 to them.

10 MR. RUSHING: Yes. But he is saying that  
11 the reason we should -- your Honor, let me step  
12 back.

13 You said our obligation to provide  
14 documents to them. First of all, there may be a  
15 misunderstanding here. We are not withholding  
16 documents from the defendants.

17 SPECIAL MASTER LEGGE: Well, I'm just  
18 trying to shorten it. Produce discovery.

19 MR. RUSHING: No, no. They're asking --  
20 no. What they're asking for are responses to  
21 contention interrogatories that set forth --

22 SPECIAL MASTER LEGGE: All right. Answer  
23 interrogatories.

24 MR. RUSHING: -- that set forth at length  
25 the basis, all facts supporting the allegations of

1       our complaint.

2               SPECIAL MASTER LEGGE:   And documents that  
3       support it.

4               I'm sorry.

5               MR. RUSHING:   Well, they want us to --

6               SPECIAL MASTER LEGGE:   I'm really trying  
7       not to use so many words.

8               MR. RUSHING:   Okay.

9               SPECIAL MASTER LEGGE:   What I'm trying to  
10       say is, what you're now arguing is meet-and-confers  
11       that concern your request for discovery from them on  
12       CRT products, when the issue here is, one, the  
13       defendants' request to you for discovery on CRT  
14       products.

15               MR. RUSHING:   Well, your Honor --

16               MR. SIMON:   Your Honor, I think what  
17       Mr. Rushing might be saying is that the issue  
18       crosses both motions, because Mr. Kessler and  
19       Hitachi and defendants want to draw the line down  
20       the middle of our class definition, and it affects  
21       both.

22               And that's why I think he's saying that  
23       somehow all discovery would stop, because if you  
24       rule a certain way --

25               SPECIAL MASTER LEGGE:   It's not going to

1 stop.

2 MR. SIMON: Yeah, I understand. But  
3 Mr. Kessler is suggesting if you rule a certain way  
4 on his motion to compel, it's going to apply equally  
5 on the other side.

6 SPECIAL MASTER LEGGE: I don't know  
7 whether it will or not.

8 MR. RUSHING: Well, your Honor --

9 SPECIAL MASTER LEGGE: The burdens are  
10 different. Burdens are different.

11 MR. RUSHING: Your Honor --

12 SPECIAL MASTER LEGGE: The burden in this  
13 situation is much different.

14 MR. RUSHING: Your Honor --

15 SPECIAL MASTER LEGGE: That is, if I make  
16 you answer a question, your information to answer it  
17 should be within your grasp.

18 You had information in front of you before  
19 you drafted the complaint. You gathered what  
20 information you had. It may be sufficient; it may  
21 be insufficient. But you gathered it.

22 In their case, they've got to go out  
23 searching for it worldwide.

24 MR. SIMON: Well --

25 SPECIAL MASTER LEGGE: That burden is a

1       heck of a different burden.

2               MR. RUSHING: Your Honor --

3               MR. SIMON: Hold on a second, Jeff.

4               Couple things. Just going back to the LCD  
5       case --

6               SPECIAL MASTER LEGGE: No. No, I don't  
7       want to go back to another case. I'm talking about  
8       this case.

9               MR. SIMON: But here's the point. The  
10       point is where we are in the case.

11               In that particular case, it was three and  
12       a half years after depositions and documents  
13       produced that the contention interrogatories were  
14       filed by some of the same counsel.

15               SPECIAL MASTER LEGGE: I understand that  
16       argument, and it's a valid argument. Whether it  
17       carries the day or not, I haven't decided. But I  
18       understand that argument.

19               MR. SIMON: And the other thing --

20               SPECIAL MASTER LEGGE: But you don't need  
21       to restate it again.

22               MR. SIMON: But the other thing I just,  
23       you know, would like to make clear is, is that  
24       there's somehow this insinuation, if not explicit  
25       statement by defendants, that there's nothing behind

1       this complaint.

2               As we told you on the motion to dismiss  
3       and in the moving papers, the amnesty applicant in  
4       this case provided us --

5               SPECIAL MASTER LEGGE: I understand.

6               MR. SIMON: -- with all this information.

7               SPECIAL MASTER LEGGE: I understand.

8               MR. SIMON: And --

9               SPECIAL MASTER LEGGE: It may be that he  
10       wasn't there at the times the discussions were going  
11       on. I don't know what he's going to say. I'm not  
12       attributing too much to that.

13              MR. SIMON: Okay.

14              SPECIAL MASTER LEGGE: All right?

15              MR. SIMON: But the point is very much  
16       that, is that the whole record is not complete at  
17       this point in time for Mr. Kessler to do the --

18              SPECIAL MASTER LEGGE: But then the --

19              MR. SIMON: -- procedure he's saying.

20              SPECIAL MASTER LEGGE: But then the  
21       question is whether it was complete enough for you  
22       to be able to meet the requirements of Rule 11 when  
23       you filed your complaint.

24              All we're doing is restating, I think,  
25       what was said 20 minutes ago.

1 MR. RUSHING: Well, let me just, your  
2 Honor, with your guys' forbearance, quickly.

3 The law with regard to contention  
4 discovery says you don't get it early in --

5 SPECIAL MASTER LEGGE: Now wait a minute.  
6 This is all management stuff.

7 I don't like contention -- I think I told  
8 you this in the prior hearing, as I recall.

9 If you take a complaint and the defendants  
10 then go down every allegation and say "What  
11 information do you have on this? What information  
12 do you have on that? What information do you have  
13 on the next one?" those are highly improper and  
14 shouldn't be done.

15 But what they're doing here is taking one  
16 issue -- one issue, okay? -- and saying: We think  
17 this is going to make a difference to the management  
18 of the case. Whether they're right or wrong is my  
19 call, but that's what they're saying.

20 So it's not the same thing as just lumping  
21 the whole thing under the category of contention  
22 interrogatories and some judge who said in a  
23 particular case "Contention interrogatories here are  
24 improper." Okay?

25 MR. RUSHING: I understand that, your

1 Honor. The reason I was addressing the discovery  
2 issue and the linkage that Mr. Kessler had made  
3 between our answers to this discovery and their  
4 responses to the finished product discovery is that  
5 under the cases we've been relying on, he's got to  
6 make a showing that there's something that this  
7 will -- that our answers will allow him to  
8 accomplish.

9 And my point is that when he says it will  
10 allow them to -- essentially allow the Court or the  
11 parties to resolve discovery issues about the scope  
12 of finished product discovery, my point is that the  
13 parties are well along the way to resolving those  
14 discovery issues by themselves.

15 So that when he says it's necessary to do  
16 that --

17 SPECIAL MASTER LEGGE: Well, are your  
18 meet --

19 MR. RUSHING: -- I'm saying it's not.

20 SPECIAL MASTER LEGGE: -- and confers even  
21 dealing with the subject matter of what discovery  
22 you have to provide to them about products?

23 MR. RUSHING: No. They are dealing  
24 with --

25 SPECIAL MASTER LEGGE: No. So it isn't



1 going to do the job.

2 MR. RUSHING: All right. Your Honor, I  
3 think that's --

4 SPECIAL MASTER LEGGE: Okay.

5 MR. RUSHING: -- all I have.

6 SPECIAL MASTER LEGGE: I'm sorry --

7 MR. RUSHING: If you're interested in  
8 having --

9 SPECIAL MASTER LEGGE: I'm sorry to be  
10 short with you, but you know, having read the briefs  
11 and hearing what I'm hearing, I'm hearing a few new  
12 things. Okay. But a lot of it is just repetition.  
13 I don't need the repetition.

14 MR. RUSHING: Let me make one last point.

15 SPECIAL MASTER LEGGE: Okay.

16 MR. RUSHING: The point that your Honor  
17 just made, that they are and that Mr. Kessler has  
18 been trying to make, apparently, that they are  
19 focusing on just one small aspect of the case and  
20 that all they want to talk about is the finished  
21 products conspiracy, this is the point Mr. Simon was  
22 making. It's -- we haven't -- our case isn't  
23 alleged that way.

24 There's one conspiracy. It embraces both  
25 products. If you set the prices of CRT -- if you

1 fix the prices of CRTs, you necessarily determine  
2 the prices of the finished products. The parties  
3 knew that. The conspirators knew that and intended  
4 that. It's one conspiracy.

5 And so when they say "We're just asking  
6 for support for a small part of it," that's -- it  
7 doesn't work that way. We're going to have -- this  
8 answer -- this request effectively asks us for the  
9 support for the entire case.

10 And that's the point. It's not --

11 SPECIAL MASTER LEGGE: No, it doesn't.

12 MR. RUSHING: It's not a small, discreet  
13 area.

14 SPECIAL MASTER LEGGE: I understand.

15 MR. RUSHING: It's the support for the  
16 entire case.

17 SPECIAL MASTER LEGGE: I understand.

18 MR. KESSLER: Your Honor, is it my turn  
19 yet?

20 SPECIAL MASTER LEGGE: Yes, yes. I'm  
21 sorry. I was making a note or two.

22 Go ahead, Counsel.

23 MR. ALIOTO: Your Honor, excuse me.

24 Before Mr. Kessler replies, may I make one point for  
25 the --

1 SPECIAL MASTER LEGGE: Yeah, sure.

2 MR. ALIOTO: -- indirect purchasers. It's  
3 very, very --

4 SPECIAL MASTER LEGGE: Can you just do it  
5 right here?

6 MR. ALIOTO: I'll do it right here.

7 It's brief, but it's somewhat new here,  
8 just to put this in perspective.

9 Mario Alioto on behalf of the indirect  
10 purchasers.

11 As your Honor noted, you're confronted  
12 here with motions to compel as to, I think, the  
13 discovery of five defendants.

14 SPECIAL MASTER LEGGE: Five? I didn't  
15 count the number.

16 MR. ALIOTO: Or five discovery requests.

17 SPECIAL MASTER LEGGE: Well, let's see  
18 what it is.

19 MR. ALIOTO: There are requests pertaining  
20 to the direct purchasers, and there are requests  
21 pertaining to the indirect purchasers.

22 SPECIAL MASTER LEGGE: Yeah. Well,  
23 there's -- I didn't actually count the number, but  
24 they're listed here in Footnote 1.

25 MR. ALIOTO: But to follow up with what

1 your Honor said earlier about these contention  
2 interrogatories that go down the complaint with  
3 respect to every allegation and say "Give me  
4 everything you know about A, B, C, D, E, F, G," that  
5 is this case, because in the wings are further  
6 contention interrogatories. Not before your Honor  
7 today, but they're going to be here, depending on  
8 what happens.

9 We had a demand letter about a week ago  
10 that we're going to go see the judge on this, and  
11 we're going to move on contention interrogatories.

12 These are contention interrogatories  
13 about: Give us everything you know about CRT  
14 products. These are contention interrogatories  
15 about: Give us everything you know about pass-on of  
16 the overcharge. That's what's before you today.

17 What's out there in the wings is: Give us  
18 everything you know on the conspiracy. Give us  
19 everything you know on why common issues predominate  
20 in the indirect purchaser case.

21 And after that wave gets settled, we're  
22 going to get more.

23 So the problem is larger than what is  
24 before your Honor today. And I submit it is  
25 precisely -- your Honor made the argument for me.

1 We are faced with -- at the end of the day, if this  
2 floodgate is opened, we are going to be answering  
3 multiple sets of contention interrogatories on every  
4 single allegation in the complaint.

5 And I have no problem doing that at the  
6 close of discovery, but not now and not before  
7 summary judgment and not after summary judgment and  
8 not before the case is tried. That's the problem,  
9 your Honor.

10 And I submit it is precisely what your  
11 Honor identified. We are going to be giving  
12 contention discovery. And it's not: Give us the  
13 documents and give us the numbers. That part, you  
14 know, that's a little less onerous. But it's:  
15 Describe in narrative form your proof as to all of  
16 these allegations.

17 And this is not a, you know, slip-and-fall  
18 in the local market, your Honor. This is a  
19 complicated worldwide --

20 SPECIAL MASTER LEGGE: I understand.

21 MR. ALIOTO: -- conspiracy.

22 And I submit to you, your Honor, this  
23 is -- your Honor alluded to this earlier. Your  
24 rulings have far-reaching consequences. And this  
25 would be a very, very onerous burden on the

1 plaintiffs, which -- you know, we bring these cases.

2 SPECIAL MASTER LEGGE: I don't --

3 MR. ALIOTO: They're not easy cases, and  
4 we bring them, and we're ready to meet the burdens.  
5 The problem is not now, your Honor. Down the road.

6 Thank you.

7 SPECIAL MASTER LEGGE: I don't totally  
8 absorb your in terrorem argument, because if I  
9 rule -- suppose I rule against you. I'm ruling on  
10 one contention interrogatory.

11 It's a different matter if I'm confronted  
12 with a whole mass of others and I see the defendants  
13 are simply using contention interrogatories to  
14 dredge everything they can because they don't want  
15 to have to draft the interrogatories on what they  
16 really want.

17 And I don't think it's going to -- any  
18 decision I make on this isn't going to have that  
19 kind of --

20 MR. ALIOTO: All I can tell you is the --

21 SPECIAL MASTER LEGGE: In fact, if I ruled  
22 for you, it is not going to be a ruling against the  
23 defendants that they can't, in certain  
24 circumstances, ask a contention interrogatory.

25 MR. ALIOTO: Very well, your Honor. I

1 just wanted to alert you, though, that the issue is  
2 larger than the motions before you.

3 SPECIAL MASTER LEGGE: I understand. I  
4 appreciate your pointing that out.

5 As I said before, only having certain  
6 motions in front of me, I have to be a little bit  
7 careful about what may be standing in the wings, the  
8 decisions that it could impact.

9 MR. GUIDO SAVERI: May I make one comment,  
10 your Honor?

11 SPECIAL MASTER LEGGE: Yes, sure.

12 MR. GUIDO SAVERI: And this will be very  
13 short.

14 SPECIAL MASTER LEGGE: Okay.

15 MR. GUIDO SAVERI: Okay?

16 Really, this gets down to two basic issues  
17 and is what Mr. Simon mentioned at the beginning.

18 What Mr. Kessler is trying to do is draft  
19 a complaint the way he wants it. This could take  
20 less than two, three minutes. He wants us to draft  
21 a complaint the way he wants it, and he wants us to  
22 split it up into two conspiracies, one finished  
23 products and one with the tubes themselves.

24 We have not alleged that, as we said many  
25 times. There's one conspiracy. And the evidence

1       that we want will develop that there was a  
2       conspiracy on CRT products, one conspiracy where the  
3       price was fixed for both the tube and the finished  
4       products.

5               Now, these contention interrogatories that  
6       he's setting up is trying to accomplish just that,  
7       to split it up.

8               And the cases that Mr. Rushing cited, that  
9       even if he is successful, you'll have to wait until  
10      the end of the summary judgment motions to see if at  
11      any time we had a colorable claim because that would  
12      defeat any Rule 11 motion.

13              These contention interrogatories, with all  
14      due respect -- I've been around a few years, and  
15      I've faced them in many, many cases -- and they've  
16      been rejected with the Convergent case, Judge Patel,  
17      and also the most recent case. And what they're  
18      trying to do is split it up.

19              We will eventually tell them what we have.  
20      And why don't we just proceed. What do we need  
21      contention interrogatories at this time? They serve  
22      no purpose. The only purpose they serve is a  
23      harassing deal to put us to a lot of work that is  
24      not necessary at this time.

25              And as Mr. Rushing said, we've been



1 talking about custodians. They're going to cut this  
2 right down. What custodians are the people who had  
3 pricing authority? They know who they are, and we  
4 have some names we can give them, and it'll get down  
5 to that limited group.

6 That's what we intend to do in this case,  
7 and not be here for a million years, like  
8 Mr. Kessler wants to do and like Mr. Kessler is  
9 doing in the ODD case in front of Judge Walker and  
10 as he did it in front -- as the group has done it in  
11 front of Illston in LCD.

12 Past is prologue. And that's what's  
13 happening in this case.

14 SPECIAL MASTER LEGGE: All right. Okay.

15 Mr. Kessler?

16 MR. KESSLER: Thank you, your Honor. I'll  
17 try to address these in some sensible order.

18 First of all --

19 SPECIAL MASTER LEGGE: Can you talk a  
20 little bit louder, notwithstanding your cold?

21 MR. KESSLER: I will try.

22 SPECIAL MASTER LEGGE: Our court  
23 reporter's having a hard time hearing you. Let me  
24 be sure I've got this on full volume.

25 MR. KESSLER: Okay.

1           SPECIAL MASTER LEGGE: I've got it on  
2 full -- I turned it up a little. So this is as full  
3 as I can get the volume, so go ahead.

4           MR. KESSLER: Okay. First of all, your  
5 Honor, I was mesmerized by Mr. Simon's argument.

6           And the reason I say that is that at least  
7 several times I'm sure I heard him say -- I'll go  
8 look back on the transcript -- that they are not  
9 alleging a conspiracy to fix prices regarding  
10 finished CRT products and that what they are  
11 alleging is a tubes conspiracy that they believe  
12 necessarily has an impact on finished CRT products.

13           If that is what Mr. Simon is alleging, I  
14 want a stipulation to that effect. It will  
15 drastically limit the discovery in this case because  
16 it would mean that, for example, we wouldn't be  
17 getting massive discovery requests asking every time  
18 someone who sold televisions went to a trade  
19 association meeting with somebody else who sold  
20 televisions and zillions of e-mails that might  
21 relate to that. So this is a critical distinction.

22           However, I also heard Mr. Simon and  
23 Mr. Saveri and others then kind of fudge and say,  
24 "Well, it's really a conspiracy that involves both  
25 products."

1           And there we are again. What we're  
2           entitled to, your Honor, in this discovery is that  
3           if they want to stipulate now on the record, and  
4           your Honor so orders, that the conspiracy they're  
5           alleging is a conspiracy regarding tubes in which  
6           they're contending the impact was necessarily on CRT  
7           finished product prices, that's fine and that would  
8           resolve this issue.

9           But unless they're willing to do that,  
10          then we are entitled to know what is the basis of  
11          what they said in the complaint.

12          And frankly, your Honor, what they said to  
13          you in oral arguments, what they said in their  
14          briefs on the motion to dismiss, what they said to  
15          Judge Conti on the motion to dismiss, which is that  
16          when this issue came up and your Honor relied upon  
17          this, they said, unequivocally, they were alleging a  
18          separate conspiracy involving finished CRT products.

19          That is the basis upon which the motion to  
20          dismiss was decided, and that is why they are  
21          propounding to us these enormous discovery requests.

22          And in that regard, I would say I don't  
23          know who they think they resolved this issue with on  
24          discovery or are close to resolving it with, but it  
25          is not with any of the Panasonic companies. And I

1 would welcome other defendants to speak up on that  
2 after I am done.

3 But I can tell you they are continuing to  
4 insist and we are continuing to object to produce  
5 any finished products discovery that is not related  
6 to impact, period.

7 And this has nothing to do with the  
8 custodian's point which has to do with the time  
9 period. This has nothing to do with the custodian's  
10 point which has to do with geographic scope.

11 We have not moved at all on this  
12 impenetrable disagreement, which I think you're  
13 going to hear, in part, in the Hitachi motion, at  
14 least in one case, that they are not entitled to,  
15 without a basis, getting discovery that relates to  
16 an alleged finished products conspiracy.

17 So -- am I going too fast now? Is that  
18 the problem?

19 SPECIAL MASTER LEGGE: Well, you started  
20 talking a little fast, and then there's a little  
21 breakup in the transmission here. But go ahead,  
22 please.

23 MR. KESSLER: Okay.

24 SPECIAL MASTER LEGGE: It would help me, I  
25 think, Mr. Kessler, if you'd slow down just a little

1 bit.

2 MR. KESSLER: Okay. I will slow down,  
3 your Honor. I think in getting louder, I got  
4 faster. That's wasn't my intention.

5 SPECIAL MASTER LEGGE: Okay.

6 MR. KESSLER: So let me go back to where I  
7 was.

8 So now you get to the issue of timing.

9 UNIDENTIFIED VOICE: I know you want it.

10 SPECIAL MASTER LEGGE: Somebody else seems  
11 to be on the line.

12 MR. KESSLER: Yeah, somebody needs to mute  
13 their line if they're listening in.

14 So --

15 SPECIAL MASTER LEGGE: Maybe that was just  
16 it. Go ahead.

17 MR. KESSLER: Maybe that was the  
18 interruption.

19 SPECIAL MASTER LEGGE: Yeah, I think so.

20 MR. KESSLER: Okay.

21 So with respect to the issue of timing,  
22 your Honor had this exactly right. We are only  
23 seeking the information they readily have at hand.

24 This has nothing to do with future  
25 discovery. It has nothing to do with contention

1 interrogatories at the close of discovery. It has  
2 nothing do with any contention interrogatory other  
3 than the very few before your Honor as you noted in  
4 this motion. That's all we're asking to be decided.

5 We believe that, again, unless they are  
6 willing to stipulate now that the only conspiracy is  
7 about tubes with what they call a necessary impact  
8 on finished products, then we are entitled to these  
9 answers now.

10 Now, I also want to make a comment about  
11 Rule 11 since he raised it. We do not agree at all  
12 with his analysis about the Keegan case and what  
13 that means, but that's not before your Honor right  
14 now.

15 If and when we get our answers to the  
16 contention interrogatories, and if and when we think  
17 a Rule 11 motion is required and then we get to it,  
18 then we'll argue that.

19 But since he raised the issue, the  
20 difference is in the Keegan case they were seeking  
21 to dismiss the entire complaint and get sanctions  
22 for that after evidence had developed that there was  
23 a cause of action.

24 This is a different aspect of Rule 11  
25 which has to do with that they've inserted an

1 extraneous, completely extraneous matter in the  
2 case, we believe, without any basis for doing so.  
3 We believe the Ninth Circuit case law here would say  
4 if they didn't have a factual basis for that, that  
5 alone triggers Rule 11.

6 And I'm happy to brief that if and when we  
7 ever get to a Rule 11 motion. I just didn't want  
8 your Honor to think we accept their version of the  
9 case law there.

10 Now, finally, I want to get to Mr. Simon's  
11 discussion about definition. You can't define your  
12 way out of Rule 11. And let me explain what I mean  
13 by that.

14 Let's say I had a complaint --

15 SPECIAL MASTER LEGGE: Well, wait a  
16 minute. Wait a minute. Wait a minute. Wait a  
17 minute. Wait a minute.

18 Let me just ask you what I think I need to  
19 know.

20 MR. KESSLER: Yes.

21 SPECIAL MASTER LEGGE: And that is, in  
22 drafting an order for you or against you, do you  
23 think I need to define what "CRT products" are, or  
24 do you think they're adequately defined in the  
25 complaint?

1 MR. KESSLER: I don't --

2 SPECIAL MASTER LEGGE: Or just a generic  
3 term "CRT products" -- somebody said here a moment  
4 ago and I wrote it down. I've lost it. Where did I  
5 put it? Finished products that incorporate a CRT.

6 MR. KESSLER: Yes, your Honor. That is  
7 the definition we believe is relevant to what we're  
8 seeking in this motion.

9 SPECIAL MASTER LEGGE: Where did that  
10 definition come from?

11 MR. KESSLER: We have proposed it in part  
12 of what our contention interrogatories are asking  
13 about.

14 SPECIAL MASTER LEGGE: Okay.

15 MR. KESSLER: In other words, we're not  
16 seeking to have them -- and I'll be very clear so  
17 they won't think it's an enormous burden.

18 We don't want them to identify any  
19 evidence that has to do only with tubes. Okay? We  
20 are only looking for any evidence they have for the  
21 part of their allegation that says there's a  
22 conspiracy relating to a finished product that  
23 contains a CRT, whether it's a CPT or a CDT.

24 We just broke it up. Some of our  
25 questions go to CPTs, which go in televisions; and



1 some go to CDTs, which go into monitors. Two  
2 different types of finished products.

3 That's why they said they're duplicative.  
4 There's no duplication. We just broke it up by the  
5 product. Your Honor, there's no duplication. And  
6 we asked the directs separately from the indirects,  
7 which obviously we want separate answers. But  
8 there's no duplication in our -- in our  
9 interrogatories.

10 But what I wanted to say about Mr. Simon,  
11 wholly differently, is that he says we're trying to  
12 break up his case.

13 And here is the problem, your Honor.  
14 Let's say I had a complaint, and I said I'm alleging  
15 a price-fixing conspiracy involving household  
16 products, and I define that to be every item you can  
17 find in a house -- a bed, a couch, a sofa, a seat, a  
18 can of soda, a steak, any item there. I'm alleging  
19 a household products conspiracy. But what I really  
20 meant about that is I have evidence alleging a  
21 conspiracy about dog food, and that's the only thing  
22 I have conspiracy about.

23 I cannot use that pleading device to say I  
24 define it as household products because I know I've  
25 got a dog food conspiracy and then use that to say I

1 would now like discovery about beds and sofas and  
2 refrigerators and bicycles and anything else because  
3 they're all household products.

4 That's what they're trying to do here in  
5 terms of the expansion of this case. And the reason  
6 they're trying to do it is because they know the  
7 backbreaking gigantic burden this places on  
8 defendants.

9 So all we're trying to do, your Honor, is  
10 to find out now, as a case management matter, at an  
11 appropriate time in this case, whether or not this  
12 case involves -- and there are really only two  
13 alternatives -- either a conspiracy that involves  
14 fixing prices and dividing markets involving  
15 finished CRT products or a conspiracy that only  
16 involves CRTs but we understand they claim the  
17 necessary impact is on the finished products.

18 That, we don't have a problem with because  
19 that's very different discovery, much more narrow  
20 tailored discovery that's appropriate to the latter  
21 claim that it wouldn't be if they're alleging and  
22 they have a basis to allege a conspiracy that would  
23 involve the finished products. And that's what  
24 we're entitled to.

25 SPECIAL MASTER LEGGE: What would you say

1 if they defined their conspiracy, as I think  
2 somebody -- one of them said a little while ago,  
3 that one conspiracy but the finished products were  
4 also a part of that one conspiracy as well as CRTs  
5 being a part of that one conspiracy.

6 MR. KESSLER: That's their fudge, your  
7 Honor. And if that's what they want, then I want to  
8 get produced in contention interrogatories a basis  
9 for them saying that finished CRT products are part  
10 of that conspiracy other than through impact. Okay?

11 And then I will tell you right now, your  
12 Honor, I do not believe they have a Rule 11 basis  
13 for anything other than through impact. Okay?

14 And so they can't hedge it by saying,  
15 well, it's all part of it. And when you hear this  
16 assignment -- half the time he's very clear, he's  
17 talking impact; and then because he wants all the  
18 discovery and he says, therefore, it's all one  
19 discovery; it involves both products. And that,  
20 your Honor, is what we're entitled to see what the  
21 basis of, other than through impact.

22 So, again, if you want to refine and  
23 narrow our request to be clear, what we would like  
24 them to be ordered to produce is any information  
25 they had at the time of the complaint that showed

1       there was a conspiracy involving finished products,  
2       including CRTs -- okay? -- other than through the  
3       impact which a CDT-alleged conspiracy had on those  
4       finished products.

5               SPECIAL MASTER LEGGE:   Okay.

6               MR. SIMON:   Your Honor, I promise, two  
7       quick points --

8               SPECIAL MASTER LEGGE:   All right.

9               MR. SIMON:   -- just for you to consider.

10              SPECIAL MASTER LEGGE:   Mr. Simon is going  
11       to reply very quickly here, but I will pick you  
12       up -- pick up on your suggestion requesting a  
13       stipulation, because if he were to accept it, it  
14       would save me a lot of work.

15              Mr. Simon, will you accept the  
16       stipulation --

17              MR. SIMON:   I'm not going to accept the  
18       stipulation --

19              SPECIAL MASTER LEGGE:   -- that your  
20       complaint alleges, with respect to a conspiracy,  
21       only one conspiracy of fixing prices of CRTs but  
22       with an impact on the prices of finished products?

23              MR. SIMON:   No.

24              SPECIAL MASTER LEGGE:   No.   Okay.

25              MR. SIMON:   So, Mr. Kessler -- you know,

1 the reason I wouldn't accept the stipulation is  
2 because he's making it up as he goes along. And one  
3 of the things he's making up is that somehow we've  
4 changed our argument.

5 And, your Honor, it's very important for  
6 you to read the transcript from the motion to  
7 dismiss hearing on October 5th, 2009, at Document  
8 No. 621, page 79 through page 89, where I made this  
9 very argument.

10 SPECIAL MASTER LEGGE: What's the --

11 MR. SIMON: This is Document No. 621, and  
12 this is the hearing transcript from the motions to  
13 dismiss.

14 SPECIAL MASTER LEGGE: Of October the 5th?

15 MR. SIMON: October the 5th, 2009.

16 And I have a copy of it for your Honor,  
17 and it will unequivocally show what Mr. Kessler is  
18 saying about us changing our argument is untrue.

19 And I'm not going to burden the record  
20 right now to read you the parts of that which are  
21 exactly identical to what I said here today. He's  
22 trying to recast what I said. He's trying to recast  
23 our complaint. And I'll leave it to you to read  
24 that and figure it out.

25 And then one last point.

1 SPECIAL MASTER LEGGE: Yeah.

2 MR. SIMON: Convergent Technologies is the  
3 law in this district.

4 And his entire premise to manage this case  
5 is to bring a Rule 11 motion. Let me read you his  
6 burden. He has to show that answers to these  
7 interrogatories are likely to expose a substantial  
8 basis for a motion under Rule 11 or Rule 56.

9 A party seeking early answers to  
10 contention interrogatories cannot  
11 meet its burden of justification by  
12 vague or speculative statements about  
13 what might happen if the  
14 interrogatories were answered.

15 Rather, the propounding party must  
16 present specific plausible grounds  
17 for believing that securing early  
18 answers to its contention questions  
19 will materially advance the goals of  
20 the Federal Rules of Civil Procedure.

21 Mr. Kessler has not met his burden. He  
22 can never meet his burden. It's all speculation,  
23 what he's talking about. It's hypothetical. And  
24 his motion should be denied.

25 MR. RUSHING: May I also just say --

1 SPECIAL MASTER LEGGE: Yes.

2 MR. RUSHING: Let me just say, with regard  
3 to the status of discovery, Mr. Kessler --  
4 specifically with Mr. Kessler's clients -- this is  
5 Jeff Rushing -- I have participated in the last  
6 couple of meetings; Mr. Kessler has not.

7 And Mr. Kessler has got it dead wrong  
8 unless I've completely misunderstood the  
9 representations that his colleagues have been making  
10 in what I took to be rather productive meetings.

11 Mr. Kessler's statement that they have not  
12 given an inch on this sort of discovery is simply  
13 wrong. And my statement that we are making progress  
14 and I had thought, heretofore at least, are likely  
15 to resolve those questions, that is completely at  
16 odds with what has been occurring at those meetings.

17 MR. YOHAI: Excuse me, Judge Legge. This  
18 is Mr. Yohai, Mr. Kessler's colleague, who did  
19 participate in those meetings.

20 And I don't agree with what Mr. Rushing is  
21 saying. All of those discussions -- in all of those  
22 discussions, all of our rights had been reserved  
23 with respect to these motions. That's been very  
24 clear since Day One.

25 And in particular, the issue of the

1 discovery that we're seeking from them was not at  
2 all an issue in those discussions since we were  
3 meeting and conferring on the discovery they were  
4 seeking from us, which, by the way, includes their  
5 seeking almost 100 custodians.

6 They will not have 100 custodians if your  
7 Honor sees fit to have them answer these  
8 interrogatories, which I have no doubt will lead to  
9 a Rule 11 motion by us.

10 SPECIAL MASTER LEGGE: Okay.

11 MR. KESSLER: Your Honor, this is -- just  
12 one final comment.

13 I don't know what Mr. Simon handed out to  
14 in terms of citation.

15 SPECIAL MASTER LEGGE: Well, I can tell  
16 you. It's right here. Hang on a minute.

17 MR. KESSLER: That's all right, your  
18 Honor.

19 I just wanted to say, I remember those  
20 arguments very well. I remember the briefs very  
21 well. I am quite confident that Mr. Simon said  
22 exactly what he said today previously.

23 I am also quite confident that Mr. Simon  
24 and others on the plaintiffs' side said exactly the  
25 opposite in the course of those motions. And if



1 this becomes an issue, we can demonstrate that.

2 The whole problem has been the constant  
3 shifting back and forth on this position, including  
4 today.

5 And as you saw by Mr. Simon's refusal to  
6 agree to the stipulation which your Honor  
7 articulated, he still is shifting.

8 SPECIAL MASTER LEGGE: Now, the citation  
9 that he has given me is a motion hearing of  
10 October 5th, 2009, pages 78 through 90, without  
11 marking. Okay?

12 MR. KESSLER: Thank you, your Honor.

13 SPECIAL MASTER LEGGE: All right. I'm  
14 concluding the oral argument of this motion.

15 And the next motion for consideration will  
16 be the motion also dealing with CRT products by the  
17 plaintiffs against the Hitachi defendants.

18 Before I get there, let's take a  
19 ten-minute recess, and -- well, let's resume in ten  
20 minutes. So that would make it quarter to 4:00  
21 San Francisco time, quarter to 7:00 New York time.

22 So I'm just going to leave this line open  
23 and hope that nobody trips on the cord and  
24 disconnects it again. Pick up in ten minutes.

25 (Recess taken.)

1           SPECIAL MASTER LEGGE: Let's resume here  
2     if we still have people on the line.

3           The next motion will be the motion by  
4     plaintiffs for discovery against the Hitachi  
5     defendants regarding CRT products.

6           Now, let me make just a few comments or  
7     observations before turning it over to you.

8           First of all, during the course of this  
9     discussion, I hope that you'll fill me in a little  
10    bit more completely on which of the -- one, two,  
11    three, four -- five Hitachi companies do what kind  
12    of business.

13          In trying to piece it together from your  
14    briefs and your record, I'm having a hard time  
15    coming up with what company is actually doing what.  
16    I mean, who is in the CRT business? Who is in the  
17    business of manufacturing television sets?

18          And I think that can make a difference to  
19    this interrogatory, at least in the sense of  
20    identifying where the likely sources of information  
21    are and where they are not, although that may be in  
22    this other subject that you have covered in your  
23    meet-and-confer.

24          However, if what I heard is correct, that  
25    plaintiffs are talking about some 100 sources of

1 documents from the Hitachi defendants, but maybe I  
2 picked up the wrong information.

3 But as I said, I'm just confused on the --  
4 one, two, three, four -- five Hitachi companies,  
5 which ones were in what business doing what.

6 MS. WEBB: Yes, your Honor.

7 SPECIAL MASTER LEGGE: Now, but as I said,  
8 the Hitachi companies are apparently separate, and  
9 so, I assume, their recordkeeping would be.

10 Now, what Hitachi has said here, I  
11 believe, is that two of the companies, HAS, which I  
12 am identifying as the Hitachi Asia Limited, and HED  
13 U.S. have never manufactured or sold CRTs, and that  
14 the company HAL, Hitachi America Limited, has  
15 searched for but hasn't found any responsive  
16 documents.

17 So I'll let the plaintiffs go ahead here,  
18 since it's their motion. But I'm just displaying to  
19 you my uncertainty about which company did what and  
20 hope clarification of that might narrow down who's  
21 obliged to do something and who's not.

22 Mr. Simon, do you want to argue from the  
23 podium here, please?

24 MR. SIMON: Sure, your Honor.

25 SPECIAL MASTER LEGGE: So you're closer to

1 the telephone.

2 MR. SIMON: Yeah.

3 With respect to the motion to compel, as  
4 you've already heard, this is the flip side of the  
5 argument you already heard. But this is more a  
6 discovery and balancing argument than the previous  
7 argument. And the question becomes two things, your  
8 Honor, in general.

9 And maybe one of my other colleagues can  
10 address the question you have about the companies.  
11 We addressed it in our letter a little bit, to the  
12 extent that there's information on the Internet that  
13 the companies do make and distribute certain  
14 products. And I'll try to address that a little  
15 bit, but Mr. Saveri also can give you a little bit  
16 more detail about that as well, I'm sure, as defense  
17 counsel.

18 But the basic position of Hitachi in the  
19 meet-and-confers and in these motions is: Before we  
20 come forward with some proof that there is a  
21 conspiracy that affects finished products, they  
22 shouldn't have to give us any discovery. And that  
23 flips the burden on its head.

24 The relevancy standard for discovery, as  
25 your Honor is very familiar with, would allow us to

1 get into areas that are potentially relevant, even  
2 if not specifically alleged in the complaint.

3 And the finished products, under even the  
4 wildest circumstances, do, as Mr. Kessler argued  
5 before, pertain from a relevancy standpoint even if  
6 it's limited to impact, even if it's limited to how  
7 those interact with each other.

8 And that's particularly true with  
9 vertically integrated companies, which Hitachi is,  
10 that there is a manufacturer of the tubes, the CRTs  
11 and the CDTs, which go into finished products which  
12 they sell into the United States. And that chain of  
13 distribution and how they charge each other and what  
14 they charge each other for the components in the  
15 finished products all is relevant under the  
16 standards that we have here.

17 So the question then becomes: How do you  
18 do this so that you don't have a gigantic burden to  
19 go to every little office and every country around  
20 the world? That's really the question on the table.

21 And the answer to that, which we talked  
22 about last time but, as I understand it, Hitachi  
23 disagrees with, is you identify those people who  
24 were in a principal position of making the decisions  
25 about the sales and marketing of the CRTs and the

1 CRT products, finished products, you identify  
2 custodians, you search the documents by those  
3 custodians, and you develop terms for searches so  
4 that you can get a finite set of documents.

5 We start there. If that group of  
6 documents satisfies us, we move on to the next  
7 thing. If that group of documents doesn't satisfy  
8 us, then we come back for more searches. Or if we  
9 can't agree on what those searches and those  
10 custodians are, then we come back to you and say we  
11 have a scope dispute as opposed to --

12 SPECIAL MASTER LEGGE: Well, okay.

13 MR. SIMON: -- a dispute about just not  
14 giving us the discovery at all.

15 SPECIAL MASTER LEGGE: Okay. Well, now,  
16 wait a minute. Can we bunch some of these things  
17 together and address the Hitachi companies?

18 Now, if what I'm reading from Hitachi is  
19 correct, they contend that HAS and HED have never  
20 manufactured or sold CRTs. Now, wouldn't that  
21 pretty well eliminate them from having to search for  
22 them?

23 MR. SIMON: Well, but that's the whole  
24 point, your Honor. If our discovery is such that  
25 we're asking for CRT products and we were not

1 fighting about the scope of what the definition is  
2 and they never made any of those products, then  
3 they're not going to provide any documents.

4 SPECIAL MASTER LEGGE: Well, that's what I  
5 mean.

6 MR. SIMON: Yeah. So, I mean, so where is  
7 the burden? So --

8 SPECIAL MASTER LEGGE: I'm saying, if I  
9 order them to produce something, can't I just  
10 eliminate HAS and HED U.S. from the requirement?

11 MR. SIMON: The only thing I would say to  
12 you is, if we don't have the discovery -- and we did  
13 find some things on the Internet that suggested that  
14 they were in the business of selling certain types  
15 of these products --

16 SPECIAL MASTER LEGGE: No. What you gave  
17 me off the Internet was a showing that they have  
18 a -- they're an affiliate of their parent company.  
19 And I'm not eliminating the parent company from  
20 this.

21 MR. SIMON: Right.

22 SPECIAL MASTER LEGGE: It's these specific  
23 entities.

24 And the same way with HAL. Which is HAL?  
25 Hitachi America Limited. Now, you've objected to

1       their -- the strength of their showing that they  
2       don't have anything. And I think they do owe you  
3       more there.

4               MR. SIMON: Right.

5               SPECIAL MASTER LEGGE: They owe you a  
6       definition by somebody as to what they did to look  
7       for things and the sufficiency of the search.

8               But if you still come up with the  
9       conclusion there isn't anything, then, okay, you  
10      have to accept that.

11              MR. SIMON: If there is a conclusion that  
12      there isn't anything in good faith with, you know,  
13      evidence produced to us that there isn't anything,  
14      then there isn't anything. We can't create  
15      something from "There isn't anything."

16              SPECIAL MASTER LEGGE: That's what I mean.  
17      You're entitled to a declaration that shows you an  
18      adequate search was made.

19              MR. SIMON: But I did want to point out,  
20      on the vertically integrated company aspect of it --

21              SPECIAL MASTER LEGGE: Yeah.

22              MR. SIMON: -- there's the whole aspect of  
23      factually, how do those products flow through the  
24      chain of distribution to the direct purchaser and  
25      whether any of those products flowed through the



1 entities they say that didn't sell those products.

2 If they got those products in the chain of  
3 distribution, we still don't have the information  
4 from that, even if they weren't the ultimate seller.

5 And then the other --

6 SPECIAL MASTER LEGGE: Wait a minute.

7 Wait a minute.

8 As I understand what HAS is saying, they  
9 were never in the CRT product business.

10 MR. SIMON: But that's not --

11 SPECIAL MASTER LEGGE: They never sold  
12 CRTs in the United States, and they never  
13 manufactured CRT products.

14 MR. SIMON: Well, I'm not hearing that  
15 saying that they were not in the chain of  
16 distribution for some part of the CRT products.

17 That's saying that -- it's distinguishing  
18 three areas. And maybe I don't know the answer  
19 completely, but that's why we propound the  
20 discovery.

21 And the way it's alleged in the complaint,  
22 at least, which focuses what the discovery should  
23 be, is that those entities, vertically integrated,  
24 affiliated with each other, either wholly owned  
25 subsidiaries or affiliates of each other,

1 participated together for the distribution of CRT  
2 products. And --

3 SPECIAL MASTER LEGGE: Well, that's a  
4 legal conclusion. I'm trying to ask now what it is  
5 that these companies did so we may be able to  
6 eliminate some sources of repositories because, in  
7 fact, they didn't do the kind of business that would  
8 have those records. That's what I'm trying to do.

9 MR. SIMON: I understand. And that's not  
10 a -- that's the way we would like to handle it, but  
11 we're getting basically: You don't get anything.

12 SPECIAL MASTER LEGGE: Well, from those  
13 companies, that's right.

14 MR. SIMON: But we have to have some  
15 showing as to why we wouldn't get anything from  
16 those companies. And as you just said --

17 SPECIAL MASTER LEGGE: If they haven't  
18 been in the business.

19 MR. SIMON: Well, then they should be able  
20 to say what business they're in and why they're  
21 associ- --

22 SPECIAL MASTER LEGGE: That's what I'm  
23 having trouble with.

24 MR. SIMON: Yeah.

25 SPECIAL MASTER LEGGE: I'm having trouble

1 defining what business it is.

2 MR. SIMON: I just want to mention two  
3 other points.

4 As you may recall from the motions --

5 SPECIAL MASTER LEGGE: All I'm saying is,  
6 Mr. Simon, I think your argument about the flow and  
7 they're an integrated company only goes so far.

8 They can be legally responsible for  
9 various things because they use this form of  
10 business model, but we're trying now to focus where  
11 information is located. I don't think it answers  
12 anything to say: Well, it's an integrated company  
13 and they all have something to do with the flow of  
14 product.

15 MR. SIMON: Well, can I give you an  
16 example?

17 SPECIAL MASTER LEGGE: Yeah, sure.

18 MR. SIMON: I'm not making this up. This  
19 is experience from other cases.

20 You always have groups of companies in  
21 these cases because they all operate together. And,  
22 typically, the companies that are lower down on the  
23 food chain, they look to the higher-up companies to  
24 dictate not only pricing, but marketing and other  
25 things.

1 SPECIAL MASTER LEGGE: Sure.

2 MR. SIMON: We don't have that information  
3 as to what the interrelationship is there, what  
4 control they exert over the other companies.

5 You know, and to the degree we don't have  
6 that information, maybe we start by getting that  
7 information for Hitachi; and then we can move to the  
8 next step of whether they are, quote/unquote, in the  
9 business or not.

10 But all we have right now is their  
11 assertion that they're not in the business. And  
12 from a discovery standpoint, that assertion, without  
13 some showing, we're saying is not sufficient.

14 I mean, there's always a guy up at the  
15 parent company that says, "I'm in charge of" --

16 SPECIAL MASTER LEGGE: I am not in any way  
17 talking about --

18 MR. SIMON: No, I understand.

19 SPECIAL MASTER LEGGE: -- cutting out  
20 discovery directed at the parent company on this  
21 subject. Okay? I'm not talking about that at all  
22 because I realize that.

23 What I'm talking about, I don't know where  
24 the facilities of HAS or the facilities of HED would  
25 be to search; but if they haven't been in those

1 businesses, the prospect and burden of going to  
2 those companies and their various custodians to  
3 search things seems to me minimally worthwhile.

4 MR. SIMON: There could be people  
5 potentially -- and we don't have the concrete answer  
6 to this, but -- there could be people potentially at  
7 some of those companies that worked at other of the  
8 companies that came to those companies with  
9 knowledge which have documents that relate to their  
10 prior role in the other companies.

11 And these are all the subtleties that I  
12 don't think you can just use a meat cleaver and just  
13 say: You can't get into this before we get some  
14 evidence in this regard.

15 SPECIAL MASTER LEGGE: Well, I'm not  
16 trying to use a meat cleaver. I'm trying to use a  
17 surgical scalpel.

18 MR. SIMON: I understand.

19 SPECIAL MASTER LEGGE: What I'm trying to  
20 do is to dissect out those things that appear to be  
21 kind of unnecessary.

22 I'm making my point, so let's just talk  
23 about it.

24 So as to HAL, I think it's quite clear  
25 that you're entitled to an adequate showing by a

1 document custodian as to what search was made and  
2 what limitations there were on the search or were  
3 there any limitations on the search or how it was  
4 directed, whatever answers the question. I think  
5 you're clear about that.

6 MR. SIMON: Okay.

7 SPECIAL MASTER LEGGE: I agree with you on  
8 the argument you've made that we're hearing from  
9 counsel here that I don't think that in a discovery  
10 setting, they are required to make to you a prima  
11 facie case before -- or that you have to make to  
12 them -- I beg your pardon -- that you have to make  
13 to them a prima facie case in order to get relevant  
14 discovery.

15 If it is relevant under the pleadings and  
16 assessments of the burdens of the discovery, you're  
17 entitled to it. I don't think they, as a condition,  
18 have to make a prima facie -- or you have to a make  
19 a prima facie case to them to get the discovery.

20 But I'm just struggling here to make some  
21 practical sense out of what is left to perhaps  
22 search.

23 My conclusion is that maybe it's with HTL,  
24 which is the parent company, as I understand it, and  
25 with HDP, Hitachi Displays Limited. I understand

1 from those companies that they were in the CRT  
2 business, they say, at least until 2003. Okay?

3 MR. SIMON: And if you're in the business  
4 during any of the period, you're in for the whole  
5 period.

6 SPECIAL MASTER LEGGE: I understand. I'm  
7 just trying to say that it seems to me those  
8 companies and the depositories within them, the  
9 people within them, are the ones who are more likely  
10 to have knowledge of this than anything else.

11 MR. R. ALEXANDER SAVERI: Can I just add a  
12 few points, your Honor, which may fill out a little  
13 bit on this?

14 SPECIAL MASTER LEGGE: Yeah, sure.

15 MR. R. ALEXANDER SAVERI: And let's  
16 address Hitachi Asia Limited. That's the HAS.

17 SPECIAL MASTER LEGGE: That's HAS.

18 MR. R. ALEXANDER SAVERI: Okay?

19 SPECIAL MASTER LEGGE: Okay.

20 MR. R. ALEXANDER SAVERI: They're in the  
21 tube business until 2002.

22 SPECIAL MASTER LEGGE: Wait a minute.  
23 Wait a minute. Wait a minute.

24 MR. SIMON: HAL.

25 MR. R. ALEXANDER SAVERI: No. HAS.

1 MR. SIMON: HAS.

2 MR. R. ALEXANDER SAVERI: Hitachi --

3 SPECIAL MASTER LEGGE: HAS?

4 MR. R. ALEXANDER SAVERI: -- Asia.

5 Hitachi Asia.

6 SPECIAL MASTER LEGGE: See, I don't have  
7 that. What were they in?

8 MR. R. ALEXANDER SAVERI: Hitachi Asia  
9 Limited, which is defined as HAS.

10 SPECIAL MASTER LEGGE: Yes, right.

11 MR. R. ALEXANDER SAVERI: And they have  
12 said: We should produce no documents from Hitachi  
13 Asia Limited.

14 What I would like to say is, they have  
15 been identified as being in the tube business until  
16 2002.

17 And here's what's important, your Honor.  
18 They are using the objection of alleged not to have  
19 sold CRTs in the U.S. It's the FTAIA objection,  
20 which is the Foreign Trade Antitrust Improvement  
21 Act.

22 In other words --

23 SPECIAL MASTER LEGGE: Well, we're going  
24 to discuss that later.

25 MR. R. ALEXANDER SAVERI: But that's with



1 this. That's why they're saying: We shouldn't have  
2 to produce anything because we didn't sell anything  
3 into the U.S.

4 SPECIAL MASTER LEGGE: No. I know. That  
5 may be. But I'm just taking what I see about this  
6 company.

7 MR. R. ALEXANDER SAVERI: That's correct,  
8 your Honor.

9 SPECIAL MASTER LEGGE: But what I'm saying  
10 about the company is not right, you're telling me.

11 They were in the tube business.

12 MR. R. ALEXANDER SAVERI: Correct.

13 SPECIAL MASTER LEGGE: Until?

14 MR. R. ALEXANDER SAVERI: They were in the  
15 tube business, your Honor, and they have been  
16 identified as the executives from that company  
17 attending the meetings with Chunghwa. So they were  
18 at the conspiracy meetings.

19 The discovery from Hitachi Asia is  
20 critical, your Honor.

21 MS. WEBB: Your Honor, Diane Webb on  
22 behalf of Hitachi.

23 I think we're mixing apples and oranges  
24 now because that was with respect to tubes. This  
25 motion is with respect to finished products.

1 SPECIAL MASTER LEGGE: Yeah. The motion  
2 does deal --

3 MS. WEBB: Right.

4 SPECIAL MASTER LEGGE: Wait a minute.

5 MS. WEBB: So --

6 SPECIAL MASTER LEGGE: Wait a minute.

7 Wait a minute. Where is the interrogatory? I have  
8 to keep my eye on that.

9 Okay. What is it precisely the plaintiffs  
10 want me to order? Plaintiffs' September 10th  
11 letter, page 6, simply says that their motion to  
12 compel discovery with respect to CRT products should  
13 be granted. That's the only definition I have.

14 MS. WEBB: Yes.

15 MR. SIMON: And that's the same definition  
16 that we're using from the complaint.

17 MR. R. ALEXANDER SAVERI: Yeah, that's  
18 right, your Honor. But the point is --

19 SPECIAL MASTER LEGGE: Hang on a minute.  
20 Hang on a minute.

21 So motion to compel discovery with respect  
22 to CRT products as defined in the complaint.

23 MR. SIMON: Correct.

24 SPECIAL MASTER LEGGE: All right.

25 MS. WEBB: Okay. And, your Honor, here is

1 the complaint, the allegation that defines CRT  
2 products. This is from the direct purchasers. We  
3 also have the indirect purchasers. And --

4 SPECIAL MASTER LEGGE: Well, wait a  
5 minute. Wait a minute. You've gone so fast, I  
6 didn't see what you were focusing on.

7 MS. WEBB: Sure. So this is --

8 SPECIAL MASTER LEGGE: Bring it over here.

9 MS. WEBB: Of course.

10 SPECIAL MASTER LEGGE: That is from what?  
11 Paragraph what? It doesn't say there.

12 MS. WEBB: This is --

13 SPECIAL MASTER LEGGE: For the purposes  
14 of --

15 MR. SIMON: It's referenced in a couple of  
16 points. Paragraph 1 is the paragraph you relied on  
17 in the motion to dismiss to accept that.

18 MS. WEBB: Right.

19 SPECIAL MASTER LEGGE: All sizes and  
20 products containing them shall be referred to . . .

21 Okay.

22 MS. WEBB: Okay. So what we have are, we  
23 have, at least generally speaking, four products  
24 that are at issue here, your Honor. We have tubes,  
25 the large CRT tubes.

1 SPECIAL MASTER LEGGE: Yeah.

2 MS. WEBB: -- that plaintiffs define as  
3 being CDTs and CPTs.

4 SPECIAL MASTER LEGGE: Yeah.

5 MS. WEBB: And those, your Honor, are the  
6 televisions that we bought in the 1980s --

7 SPECIAL MASTER LEGGE: I know what they  
8 are.

9 MS. WEBB: -- 1990s. Okay?

10 So in the television context, it's a CPT.  
11 That's a CRT picture tube.

12 SPECIAL MASTER LEGGE: Yes, I understand.

13 MS. WEBB: And in the computer context,  
14 it's a CDT. That's a CRT display tube for a  
15 computer monitor.

16 Then we also have two categories of  
17 finished products that contain CRTs, either --

18 SPECIAL MASTER LEGGE: TV tubes.

19 MS. WEBB: -- CPTs or CDTs. Correct.

20 SPECIAL MASTER LEGGE: Television sets  
21 or --

22 MS. WEBB: Computers.

23 SPECIAL MASTER LEGGE: -- computers.

24 MS. WEBB: Right.

25 And what HAS is saying is they weren't in

1 the CRT finished products business. Not in the CRT  
2 manufacturing business, but the CRT finished  
3 products.

4 And this motion, as I read it, has to do  
5 with CRT finished products.

6 MR. R. ALEXANDER SAVERI: Your Honor, if  
7 that is true, your Honor, for the entire period of  
8 time back to 1995, and it's not standing on the  
9 objection of the FTAIA into the U.S. of how they've  
10 defined it --

11 SPECIAL MASTER LEGGE: I think that's a  
12 different issue, and we'll --

13 MR. R. ALEXANDER SAVERI: But -- but --

14 SPECIAL MASTER LEGGE: It's been raised.

15 MR. R. ALEXANDER SAVERI: Correct.

16 SPECIAL MASTER LEGGE: But I'll address it  
17 separately.

18 MR. R. ALEXANDER SAVERI: But the point, I  
19 think, is that -- and if that's true, to the sense  
20 that they've not made finished products, TVs or  
21 monitors, regardless of where it's sold, not into  
22 the U.S. as they're defining it, that's the issue.

23 And if the fact is, if the fact that they  
24 didn't make any finished products, then the answers  
25 to the discovery is: There are no documents because

1 we didn't make any finished products. But not an  
2 objection that we will not produce any finished  
3 product information. That's the point, your Honor.

4 MR. SIMON: And I think, just to put  
5 another point on it, and counsel can express herself  
6 on this point, is that if they're standing on the  
7 objection procedurally that they shouldn't give us  
8 anything until we make some showing --

9 SPECIAL MASTER LEGGE: I understand.

10 MR. SIMON: -- then we need to know that  
11 too.

12 So if we pass those two and it's simply a  
13 matter of discovery and ability to show us by  
14 declaration or even we would take counsel's proffer  
15 what evidence shows that, then we probably can work  
16 that out.

17 But right now we're not at that point.  
18 And that's why we had to bring the motion.

19 And I wasn't involved in the  
20 meet-and-confer discussions, but it got to an  
21 impasse with respect to those issues, whereas with  
22 others, we're able to get beyond that point. And  
23 that's why we brought the Hitachi motion first.

24 MR. R. ALEXANDER SAVERI: And if I --

25 MS. WEBB: Your Honor --

1 MR. R. ALEXANDER SAVERI: -- could address  
2 how -- maybe if I do that, then we can pick that up,  
3 which is the other entity, which is Hitachi America  
4 Limited.

5 SPECIAL MASTER LEGGE: Wait a minute.  
6 Wait a minute. Stay with HAS for a moment.

7 MR. R. ALEXANDER SAVERI: Sure.

8 MS. WEBB: HAS --

9 SPECIAL MASTER LEGGE: You say they were  
10 in the tube business --

11 MS. WEBB: Yes, your Honor.

12 SPECIAL MASTER LEGGE: -- until  
13 sometime -- I've forgotten the date. What was the  
14 date?

15 MR. R. ALEXANDER SAVERI: 2002, your  
16 Honor.

17 SPECIAL MASTER LEGGE: Okay. But that  
18 they were never in the products, the CRT products.

19 MS. WEBB: Correct, your Honor. Finished  
20 products business.

21 MR. R. ALEXANDER SAVERI: Anywhere in the  
22 globe?

23 MS. WEBB: That's my understanding.

24 MR. R. ALEXANDER SAVERI: Well, there's  
25 been no showing of that, your Honor.

1 MS. WEBB: Well, I understand. And I  
2 think this begs the question of why the  
3 meet-and-confer wasn't allowed to continue, because  
4 we produced information back in 2008 that showed  
5 which of the entities were involved in which of the  
6 businesses at what period of time.

7 And we raised that again in our  
8 meet-and-confer letter in response to --

9 SPECIAL MASTER LEGGE: I don't have that,  
10 do I?

11 MS. WEBB: -- plaintiffs' meet-and-confer  
12 letter.

13 No, I don't.

14 SPECIAL MASTER LEGGE: I searched through  
15 this to try to answer my own question about which  
16 companies made them. I didn't come across anything.

17 MS. WEBB: But my point is, your Honor, if  
18 we had been allowed to continue this meet-and-confer  
19 process and these were questions that were being  
20 raised, rather than raising them on reply in a  
21 motion to dismiss, we could have dealt with this in  
22 the meet-and-confer.

23 And I believe that what should happen here  
24 is we should be ordered to go back and  
25 meet-and-confer.



1           To the extent that there are questions  
2           about which entities were involved in which  
3           businesses when, we can answer those. To the extent  
4           that proffers are necessary, we can provide those.

5           And that is necessarily going to guide all  
6           of this discovery in terms of who did what when, who  
7           has documents, who doesn't have documents.

8           MR. SIMON: Can I make one point, just a  
9           practical point, if I may, your Honor?

10          SPECIAL MASTER LEGGE: Yeah, sure.

11          MR. SIMON: And again, I'll harken back to  
12          another case, LCD, because I happen to know a lot  
13          about it.

14          What we did there to sort this out -- and  
15          I think what we suggested to you at one point, and  
16          we never got to the point of actually implementing  
17          it -- if there was a defendant in that case that  
18          said they were not properly named because they  
19          weren't in the business at all, they had no  
20          connection to the business whatsoever, there was an  
21          order that said that the defendants had the burden  
22          to tell us that and make a showing that that was the  
23          case.

24          If we didn't believe that or it was  
25          contentious, then we did a 30(b)(6) deposition,

1       which we can't do here yet, to talk to the person  
2       most knowledgeable about what that person's business  
3       was, that company's business.

4               SPECIAL MASTER LEGGE:   Didn't you take a  
5       deposition like that?

6               MR. SIMON:   In this case?   Not in this  
7       case.   We're stayed.

8               SPECIAL MASTER LEGGE:   I know, but how  
9       would the language of the stay -- well, never mind.

10              MR. SIMON:   Well, we interpret the  
11       language of the stay to say we couldn't do that.  
12       Maybe the way to resolve this is by taking a  
13       30(b)(6) deposition.

14              MR. R. ALEXANDER SAVERI:   Your Honor, if I  
15       may, just as it relates to Hitachi, as it relates to  
16       the finished product issue, the position was clearly  
17       taken not until our contention interrogatories were  
18       answered and not until a Rule 11 procedure would we  
19       go forward at all with finished products.

20              SPECIAL MASTER LEGGE:   All right.

21              MR. R. ALEXANDER SAVERI:   And so we have  
22       to go --

23              SPECIAL MASTER LEGGE:   Okay, all right.

24              MR. R. ALEXANDER SAVERI:   -- past that,  
25       your Honor.   And I think the key --

1 MS. WEBB: Your Honor --

2 MR. R. ALEXANDER SAVERI: Wait. Let me  
3 finish, please.

4 MS. WEBB: -- I need to correct that.

5 MR. R. ALEXANDER SAVERI: Let me finish,  
6 please.

7 And the other point is, what are the  
8 objections that they are standing on; in other  
9 words, that we've got to go back to 1995 and the  
10 scope of the foreign discovery with the FTAIA,  
11 because that's what couching whether we'll look  
12 here.

13 SPECIAL MASTER LEGGE: Well, that's  
14 getting into --

15 MS. WEBB: Your Honor, that is --

16 SPECIAL MASTER LEGGE: -- two other issues  
17 we've got here.

18 MS. WEBB: That is a separate issue, your  
19 Honor.

20 But if I may, the position of the Hitachi  
21 defendants has never been that it would not produce  
22 any finished products discovery. We said that  
23 during our telephonic meet-and-confers. We said  
24 that in our letter.

25 To the extent that there is sales data

1 that shows impact, that will be produced. So  
2 finished products data will be produced,  
3 transactional data.

4 To the extent that plaintiffs are asking  
5 for finished products conspiracy documents, which is  
6 what Mr. Kessler was just arguing, we have taken the  
7 position, your Honor, that a primary preliminary  
8 showing should be made, some evidence that there is  
9 a separate or a continuing conspiracy, if you want  
10 to use plaintiffs' terminology, of both a tubes  
11 conspiracy and a finished products conspiracy.

12 And I'm not going to re-argue all the  
13 points that Mr. Kessler made, but I just want to say  
14 we have never taken the position: No finished  
15 products discovery for any entity. That's not what  
16 we said. That's not what we're willing to do.

17 SPECIAL MASTER LEGGE: I think what you've  
18 agreed to do, that as to your companies, HTL, which  
19 is the parent, and HDP, which is Hitachi Display,  
20 that you will produce transactional and damages  
21 discovery re CRT products.

22 MS. WEBB: Correct.

23 SPECIAL MASTER LEGGE: All right. Now  
24 that seems to be --

25 MS. WEBB: That relates --

1 SPECIAL MASTER LEGGE: It's quite a lot.

2 MS. WEBB: That relates, your Honor, to  
3 sales into the United States or sales --

4 SPECIAL MASTER LEGGE: Well, I realize  
5 you've got -- I realize we have that to consider.

6 MS. WEBB: Yes.

7 SPECIAL MASTER LEGGE: The definition of  
8 "what."

9 MS. WEBB: Yes.

10 SPECIAL MASTER LEGGE: All right.

11 MS. WEBB: That is the "what," yes.

12 SPECIAL MASTER LEGGE: All right. That's  
13 the "what."

14 MS. WEBB: Then we can work on the  
15 parameters of the "what."

16 SPECIAL MASTER LEGGE: Okay. Now, that  
17 seems to me: What are you doing?

18 You're saying: Okay, you can have all the  
19 information on manufacturing and sales and pricing  
20 and all the stuff that's in the accounting  
21 department.

22 But as far as conspiracy documents --  
23 which will be what? Going to files, and asking  
24 about meetings that the executives have attended, or  
25 interoffice memoranda?

1 MS. WEBB: E-mails.

2 SPECIAL MASTER LEGGE: Or e-mails or that  
3 kind of thing, you don't want to have to do that.

4 MS. WEBB: And that's based on the burden  
5 and the scope of that discovery.

6 SPECIAL MASTER LEGGE: So just focusing on  
7 that, HAS -- I beg your pardon. Where am I?

8 MS. WEBB: I think we're on HDL and HDT,  
9 your Honor.

10 SPECIAL MASTER LEGGE: Yes, we are.

11 MR. R. ALEXANDER SAVERI: And, your Honor,  
12 there would be one other company, which is Hitachi  
13 Electronics Devices U.S.A., HED U.S. There's five  
14 companies, just so we're clear.

15 SPECIAL MASTER LEGGE: Yeah, okay. They  
16 say -- this is my understanding, that Mr. Kaiser's  
17 declaration said that they have never manufactured  
18 or sold CRT products.

19 MS. WEBB: Finished products.

20 SPECIAL MASTER LEGGE: And as to CRTs,  
21 they ceased that business in 2003.

22 MR. R. ALEXANDER SAVERI: Subject to the  
23 scope objection, your Honor. But if it is anywhere  
24 in the globe -- and I believe that's to Hitachi  
25 Asia. And Hitachi Asia executives have been

1 identified as going to the conspiracy meetings.  
2 They've been going to the meetings. They're there  
3 for Hitachi. They've attended the meetings.  
4 They've attended the glass meetings, your Honor,  
5 Hitachi Asia executives.

6 So if they are standing on the objection  
7 that they never made CRT finished products anywhere  
8 in the globe but they're objecting on that, saying  
9 we're only talking about to the U.S., and if it's --

10 SPECIAL MASTER LEGGE: Well, wait a  
11 minute. Wait a minute.

12 MS. WEBB: We're only talking about  
13 finished products with respect to products.

14 MR. R. ALEXANDER SAVERI: On the finished  
15 products.

16 Then the answer to the discovery, if you  
17 never made it anywhere, finished products, is  
18 simply: We didn't make it.

19 But they haven't. They objected to it,  
20 your Honor, saying: We're not going to produce  
21 anything.

22 If there's nothing to produce, there  
23 should be no objection.

24 MR. SIMON: And if there's nothing to  
25 produce, then --

1 MR. GUIDO SAVERI: Then what are they  
2 doing at the meetings?

3 MR. SIMON: -- the offer to provide the  
4 transactional --

5 MR. R. ALEXANDER SAVERI: Right.

6 MR. SIMON: -- data on impact --

7 MR. GUIDO SAVERI: What are they doing at  
8 the meetings?

9 MR. SIMON: -- there would be no  
10 documents.

11 MR. R. ALEXANDER SAVERI: There's no  
12 burden because there's nothing to produce.

13 MS. WEBB: Right.

14 MR. R. ALEXANDER SAVERI: They were  
15 standing on objections.

16 Their objection has been, not until we  
17 make a prima facie showing will we get anything  
18 related to conspiracy.

19 MR. SIMON: And if I can give you another  
20 concrete example, you could have somebody who works  
21 at one of the companies that doesn't make the  
22 products as represented, and they could have  
23 information from somebody at one of the companies  
24 that is involved in the business that was involved  
25 in the conspiratorial meetings.



1           And the key would be to identify which  
2           people had contact with those who were at the  
3           meeting, coming up with a list. And I recognize, I  
4           think we all recognize that we have to come up with  
5           a reasonable list.

6           But we haven't gotten to that point  
7           because we haven't been able to get over the first  
8           hurdles on just the arguments saying that they  
9           shouldn't have to do it in the first place.

10           And we're not trying to make them give us  
11           something they don't have. We're just trying to  
12           make sure that we understand that they're saying  
13           they don't have it as opposed to they object to  
14           giving it to us.

15           MS. WEBB: Well, your Honor, I can tell  
16           you that HAL served discovery responses that said --

17           SPECIAL MASTER LEGGE: I'm sorry? What?

18           MS. WEBB: HAL, which is the Hitachi  
19           America entity, served discovery responses that  
20           said: We don't have anything. And yet --

21           SPECIAL MASTER LEGGE: No, I realize you  
22           have. I realize you have done that.

23           MS. WEBB: And yet we got a motion to  
24           compel.

25           So I'm a little unsure about what the

1 position here is, because I'm hearing if we say we  
2 don't have anything, then there won't be any motion  
3 to compel; but in the case that we did say we don't  
4 have anything, there was a motion to compel.

5 SPECIAL MASTER LEGGE: Well, but they were  
6 quibbling about -- I shouldn't say "quibbling."

7 They were complaining about your lack of  
8 specificity of the certificate verifying that a  
9 search had been made, that an adequate search had  
10 been made.

11 MR. R. ALEXANDER SAVERI: And also, your  
12 Honor, it's also standing on the objections.  
13 They've made the objections of the FTAIA, that it  
14 would relate only to the U.S., and on the time  
15 period.

16 SPECIAL MASTER LEGGE: We'll deal with  
17 that when we get to that.

18 MR. R. ALEXANDER SAVERI: Right.

19 MR. SIMON: I think that, if I may, taking  
20 a deposition of the person most knowledgeable on  
21 this topic would cut to the chase.

22 SPECIAL MASTER LEGGE: Which person?

23 MR. SIMON: The person most knowledgeable  
24 about the business of the entities that they say  
25 were not in the business.

1           And we took multiple depositions in  
2           another case, in LCD, for example, and people would  
3           say "We're not in that business," and when we took  
4           the 30(b)(6) deposition, there were certain aspects  
5           of the business that they were in.

6           And I know we can't take depositions right  
7           now, but that would be --

8           SPECIAL MASTER LEGGE: Well, I don't know.

9           MR. SIMON: -- an alternative.

10          SPECIAL MASTER LEGGE: I have the order,  
11          the stay order in here, but I'm afraid to lift the  
12          speaker phone.

13          MR. SIMON: No, don't do that.

14          MR. R. ALEXANDER SAVERI: Don't do that.  
15          We'll lose a few people.

16          SPECIAL MASTER LEGGE: Does anybody have a  
17          copy of the stay order?

18          MR. SIMON: I guess as Mr. Kessler asked  
19          me to stipulate, maybe I would ask counsel to  
20          stipulate, let us take a 30(b)(6) deposition on the  
21          discrete topic of what business they actually were  
22          in during the class period. And it would be a  
23          fairly straightforward deposition, and then we  
24          wouldn't have this issue.

25          If that deposition shows that that

1 company, in fact, was as represented --

2 SPECIAL MASTER LEGGE: Well, we can't --

3 MR. SIMON: -- then that's the answer.

4 SPECIAL MASTER LEGGE: -- violate the stay  
5 order --

6 MS. WEBB: That's correct, your Honor.

7 SPECIAL MASTER LEGGE: -- if the language  
8 of the stay order bars that.

9 MS. WEBB: It does, your Honor.

10 SPECIAL MASTER LEGGE: I am questioning  
11 whether it does or does not.

12 MS. WEBB: It does bar that.

13 And I think fundamentally there's a  
14 problem with containing that kind of deposition to  
15 be --

16 SPECIAL MASTER LEGGE: No. I agree with  
17 you.

18 MS. WEBB: -- just the custodian of  
19 records.

20 SPECIAL MASTER LEGGE: I agree with you.

21 MS. WEBB: Not only does it violate the  
22 stay order, it's a sort of unwieldy deposition to  
23 keep on track for limited topics.

24 But the issue of a proffer on some of the  
25 defendants that say they have no documents or they

1 weren't in the business I think would be acceptable.

2 For example, how --

3 SPECIAL MASTER LEGGE: I'm sorry? What?

4 MS. WEBB: Would be acceptable.

5 SPECIAL MASTER LEGGE: What would be  
6 acceptable?

7 MS. WEBB: A proffer.

8 MR. SIMON: An evidentiary proffer.

9 SPECIAL MASTER LEGGE: On your part?

10 MS. WEBB: An evidentiary proffer on --

11 SPECIAL MASTER LEGGE: On your part?

12 MS. WEBB: Yes, on which entity was in  
13 which business at which particular time, because,  
14 for example, with respect to HAL, HAL was a  
15 purchaser of tubes. HAL is actually a plaintiff in  
16 this action. HAL shouldn't be a defendant in this  
17 action.

18 MR. GUIDO SAVERI: May I make one  
19 observation? And correct me if I'm wrong.

20 I think Mr. Saveri said that there were  
21 representatives of you -- your representatives at  
22 some of these meetings that we have discussed.

23 Now, if your client isn't making the  
24 product, what's he doing at the meeting where  
25 they're fixing prices?

1 MS. WEBB: I don't know exactly what  
2 you're talking about in terms of meetings.

3 MR. GUIDO SAVERI: Well, apparently, these  
4 meetings that we alleged in our complaint, set out  
5 certain dates, and we understand that some of these  
6 people that you say of this company that is not  
7 making tubes were at these meetings where they were  
8 fixing prices.

9 Now, what were they doing at the meetings?  
10 Watching a Giants ballgame?

11 MS. WEBB: Really?

12 MR. GUIDO SAVERI: What were they doing at  
13 the meeting?

14 MS. WEBB: I don't think this is  
15 productive.

16 MR. SIMON: Your Honor, maybe --

17 SPECIAL MASTER LEGGE: I want to advance  
18 the ball here.

19 MR. SIMON: Not to put any more burden in  
20 your court, but if we can't do depositions, which  
21 I'm sure we could get a stipulation from DOJ and  
22 everybody else to do a 30(b)(6) deposition, but if  
23 we didn't want to go that route --

24 SPECIAL MASTER LEGGE: I just don't think  
25 we can.

1 MR. SIMON: But if we can't go that route,  
2 then maybe we should take counsel up on her offer  
3 and maybe you should attend that proffer so that we  
4 can ask questions exactly on these topics; you can  
5 hear the answers so it's not the attorneys telling  
6 you the interpretation of the answers; and then that  
7 would be the further step that we would need to make  
8 a final decision on the motion to compel.

9 MS. WEBB: Your Honor --

10 SPECIAL MASTER LEGGE: Do we need --

11 MS. WEBB: -- I'm talking about making a  
12 written proffer.

13 SPECIAL MASTER LEGGE: Yeah, I understand.

14 MR. SIMON: Well --

15 SPECIAL MASTER LEGGE: I don't think so.

16 MR. SIMON: -- it depends what the written  
17 proffer says. We've seen good written proffers, and  
18 we've seen written proffers that don't tell us  
19 anything. So . . .

20 MS. WEBB: Well, I certainly think that --

21 MR. SIMON: What would you propose would  
22 be in the written proffer?

23 MS. WEBB: Describing the entity and what  
24 business they were in during what periods of time.

25 MR. GUIDO SAVERI: Take the deposition.

1 MR. R. ALEXANDER SAVERI: Without any --  
2 subject to objections on the FTAIA, global scope,  
3 and the time period --

4 MS. WEBB: We're not waiving our  
5 objections on discovery.

6 MR. R. ALEXANDER SAVERI: There you are.

7 MS. WEBB: But I think what it does is it  
8 gets us down to which entities are in play here and  
9 which entities aren't in play.

10 SPECIAL MASTER LEGGE: Well, didn't you  
11 get into this discussion in your meet-and-confers?

12 MS. WEBB: We did. And it was in our  
13 meet-and-confer letter, your Honor; but nonetheless,  
14 we got a motion to compel against all.

15 MR. R. ALEXANDER SAVERI: Your Honor,  
16 that's not true. They stood on the objection that  
17 we get no evidence until the contention  
18 interrogatories.

19 SPECIAL MASTER LEGGE: All right.

20 MR. LEHMANN: Your Honor, Michael Lehmann.  
21 We have some declarations in here, Tilly, Lim, and  
22 Heiser --

23 SPECIAL MASTER LEGGE: I know we do.

24 MR. LEHMANN: -- that describe the  
25 limitations on what HAL and HED U.S. did.



1           We put in our reply letter brief Internet  
2           research that we did that called into question some  
3           of the specific factual assertions there.

4           SPECIAL MASTER LEGGE: Well, as I recall,  
5           that was simply a reflection that there was a parent  
6           company.

7           MR. LEHMANN: No. There was also a  
8           question, for example, about whether HED U.S.'s  
9           selling, manufacturing CRTs.

10          I mean, we pointed out, for example, in  
11          the brief that there seemed to be some question, for  
12          example, about whether HAL is continuing to sell CRT  
13          products up to the present and what exactly the  
14          product mix that these companies are selling is  
15          currently.

16          MS. WEBB: And I really think that's  
17          something that should be addressed, your Honor,  
18          because the product that plaintiffs are relying on  
19          to try to call into question the veracity of the  
20          Hitachi defendants' declarations are not CDT or CPT  
21          products. They are flat-screen TVs that incorporate  
22          a completely different technology called PRT.

23          So those are the kinds of issues that  
24          should have been vetted before we got to this motion  
25          to dismiss stage so that plaintiffs understood which

1       entity did what, plaintiffs understood which  
2       products they've alleged are at issue and not at  
3       issue, and not try to raise the specter that the  
4       Hitachi defendants are not being truthful based on  
5       some product that isn't even contained within the  
6       complaint and isn't at issue here.

7               MR. SIMON: So we could advance the ball  
8       by doing the following, I would propose:

9               Since there's no question about those  
10       entities that are in the business, the parent  
11       companies, as you've been calling them, you could  
12       order that information all be turned over.

13              We could have an additional proffer,  
14       evidentially written or however is most convenient,  
15       on the other entities. We could have a further  
16       meet-and-confer if we think we need to challenge  
17       that. And then we could come back on those entities  
18       to your Honor.

19              But the one thing I would say is, if we do  
20       the proffer without waiving your argument, you know,  
21       for future, the proffer should be made without the  
22       FTAIA objection for the proffer purposes to convince  
23       us that those entities shouldn't be in and without  
24       making --

25              SPECIAL MASTER LEGGE: By the time you go

1 back to work on this, I will probably have given you  
2 a decision on the foreign entity arguments and the  
3 time frame. So you shouldn't have to leave that up  
4 in the air.

5 MS. WEBB: So if what I'm understanding is  
6 that the proffer would be made without a waiver of  
7 any of the objections that we've made in terms of  
8 what would actually be produced, that's fine. I  
9 think it will --

10 MR. SIMON: But without holding anything  
11 based on those objections. In other words, you're  
12 not waiving the argument that you can say: You  
13 can't consider this in the future. It's not part of  
14 the case. But you're not keeping any information  
15 from us on the basis of those objections to explain  
16 the business of the company you're proffering on.

17 MS. WEBB: For the purposes of the  
18 proffer.

19 MR. SIMON: Right.

20 MS. WEBB: But preserving the objections  
21 for the purposes of the production of discovery.

22 MR. SIMON: Yeah. That would be staging  
23 it, and maybe that's more complicated than it needs  
24 to be, but it seems like a reasonable solution.

25 MS. WEBB: I mean, I believe this is what

1 we were trying to do in our letters in terms of  
2 explaining to you, to plaintiffs what business each  
3 entity was in at what particular time.

4 Now, we seem to have some confusion, given  
5 that technology that is a later technology than is  
6 alleged in your complaint has come in, a motion to  
7 dismiss against an entity that said "We don't have  
8 any documents" has been brought.

9 So if we can do a written proffer on the  
10 businesses, what they did, what they manufactured or  
11 didn't manufacture during a particular time without  
12 waiving the objections that we raised in the  
13 discovery to the actual production, that's something  
14 we could agree to do as an initial step in order to  
15 be able to figure out where we go from there.

16 MR. SIMON: So we just did the  
17 meet-and-confer in front of you.

18 SPECIAL MASTER LEGGE: I guess that's  
19 right.

20 MR. SIMON: We'll look at --

21 MR. R. ALEXANDER SAVERI: I mean, that's  
22 fine. Then this is all as to finished products,  
23 your Honor.

24 SPECIAL MASTER LEGGE: Pardon me?

25 MR. R. ALEXANDER SAVERI: This is all as

1 to finished products, not tubes.

2 SPECIAL MASTER LEGGE: Well, no. I think  
3 the definition of the business has got to include --

4 MR. R. ALEXANDER SAVERI: All of it.

5 SPECIAL MASTER LEGGE: -- all of it.

6 MR. R. ALEXANDER SAVERI: Yeah, I agree.

7 That's great, your Honor.

8 MS. WEBB: So for the defendants that are  
9 at issue here, we will submit a proffer that  
10 contains the name of the defendant, the type of  
11 product that it produced, and the time period by  
12 which that was produced, and the locale that it was  
13 produced in.

14 SPECIAL MASTER LEGGE: Okay. And some of  
15 that may have to have time frames.

16 MS. WEBB: Yes, the time period in which  
17 certain products were produced.

18 SPECIAL MASTER LEGGE: Okay. All right.

19 MR. SIMON: I think there should be --

20 SPECIAL MASTER LEGGE: And I think also  
21 you should say, since we're dealing with this  
22 specifically, were they ever in the business of CRT  
23 tubes? Were they ever in the business of CRT  
24 products?

25 MS. WEBB: Absolutely.

1           SPECIAL MASTER LEGGE: State the negative  
2 as well as the positive.

3           MS. WEBB: Sure. For example, somebody  
4 produced CDT tubes but did not, likewise, produce  
5 computer monitors.

6           MR. SIMON: I think it would be helpful  
7 for us to have a short narrative on, you know, what  
8 the business of that company is, which should be  
9 pretty easy, and how it fits into the chain of  
10 distribution of the other companies and what the  
11 relationship is to those other companies.

12           So if it's a wholly owned subsidiary, for  
13 example, that we just understand that and who  
14 controls what entity.

15           Because we're not waiving our arguments --  
16 we would not be waiving our arguments either to  
17 argue --

18           SPECIAL MASTER LEGGE: I'm not asking you  
19 to waive.

20           MR. SIMON: Yeah. We would be able to  
21 argue Royal Printing or, you know, anything else  
22 down the line on control over various entities.

23           MS. WEBB: I understand. And we are not  
24 waiving the argument on the other side about the  
25 control of entities and what needs to be produced or

1 not produced.

2 SPECIAL MASTER LEGGE: Now, how long do  
3 you think it will take you to do that?

4 MS. WEBB: Dealing with Asian companies  
5 can be a little time-consuming, but I imagine we  
6 could have this to you within -- to plaintiffs  
7 within 14 days.

8 SPECIAL MASTER LEGGE: Not available at  
9 one corporate position?

10 MS. WEBB: No. No, your Honor.

11 SPECIAL MASTER LEGGE: You can't go to the  
12 corporate secretary?

13 MS. WEBB: Unfortunately, no.

14 SPECIAL MASTER LEGGE: Okay. By  
15 November -- today is the 12th. So it'd be  
16 November 26th. What day of the week is that?

17 I've got my calendar here. Oh, I've got  
18 it here.

19 MR. SCARBOROUGH: It's a Friday. It's the  
20 day after Thanksgiving.

21 SPECIAL MASTER LEGGE: Okay. Let's make  
22 it the following Monday, November 29.

23 MS. WEBB: I'm sorry, your Honor. Could  
24 we make it November 30th? Because I'm actually  
25 going to be out of town on the 29th.

1 SPECIAL MASTER LEGGE: All right.

2 November 30th.

3 Okay. Then what happens? What are you  
4 folks going to do then?

5 MR. R. ALEXANDER SAVERI: Well, your  
6 Honor, we would see what they provide. And then the  
7 question would be whether there are would be  
8 custodians subject to what they tell us that would  
9 have relevant --

10 SPECIAL MASTER LEGGE: Well, what are you  
11 going to do? Meet and confer?

12 MR. R. ALEXANDER SAVERI: Yeah, we'll meet  
13 and confer after that, your Honor.

14 SPECIAL MASTER LEGGE: Are you going to  
15 schedule a hearing right back in front of me?

16 MR. R. ALEXANDER SAVERI: I think we'll  
17 have a meet-and-confer within a week after we get  
18 it.

19 MS. WEBB: Yes, I think that's great. I  
20 think the plaintiffs have identified some Hitachi  
21 custodians. We can start to meet and confer on the  
22 custodian basis and see where that gets us.

23 SPECIAL MASTER LEGGE: Okay.

24 Whereby . . .

25 MR. R. ALEXANDER SAVERI: I'll get to



1       that. We'll talk about the custodians in a minute,  
2       your Honor.

3               SPECIAL MASTER LEGGE: By December 7th.

4               And then report to me by -- well, how long  
5       do you think? December 10?

6               MR. R. ALEXANDER SAVERI: Sure. Is  
7       that --

8               SPECIAL MASTER LEGGE: Soon enough?

9               MR. R. ALEXANDER SAVERI: The 10th, that's  
10       about ten days later? That'd be fine.

11              SPECIAL MASTER LEGGE: No. That's seven  
12       days later --

13              MR. R. ALEXANDER SAVERI: That'd be fine.

14              SPECIAL MASTER LEGGE: -- after your  
15       meet-and-confer.

16              MR. R. ALEXANDER SAVERI: Sure.

17              SPECIAL MASTER LEGGE: Three days after  
18       your meet-and-confer.

19              MS. WEBB: No. I think we need more time.

20              MR. R. ALEXANDER SAVERI: One week. Why  
21       don't we go a week and a week.

22              MS. WEBB: Plaintiffs will provide a  
23       custodian list, and then --

24              MR. R. ALEXANDER SAVERI: Well, that's --  
25       we don't want to -- no, we're not going -- I'd like

1 to talk about that.

2 SPECIAL MASTER LEGGE: Report to me by  
3 December 1st.

4 MR. R. ALEXANDER SAVERI: We don't agree  
5 that we're going to provide a custodian list. If  
6 we're going to go custodians, we want mutual  
7 custodians.

8 MS. WEBB: All right. We can talk about  
9 that.

10 MR. R. ALEXANDER SAVERI: There we are.

11 SPECIAL MASTER LEGGE: Now, I suppose -- I  
12 suppose we are all of us, plaintiffs, defendants,  
13 and I, are sort of agreeing that in order to soften  
14 the burden of producing whatever has to be produced,  
15 that trying to identify where it might come from and  
16 where it might not exist is a useful process.

17 MR. R. ALEXANDER SAVERI: Yes.

18 MS. WEBB: Yes, your Honor.

19 SPECIAL MASTER LEGGE: Even with  
20 Mr. Simon's suspicious mind that if it exists over  
21 here, then it's got to have permutations throughout  
22 the entire structure of the defendant.

23 MR. SIMON: That's why I'm shifty and  
24 mesmerizing.

25 SPECIAL MASTER LEGGE: Okay. All right.

1       So that will be the schedule with respect to that  
2       particular motion.

3               MR. ALIOTO: Your Honor, before we move  
4       on.

5               SPECIAL MASTER LEGGE: Yes.

6               MR. ALIOTO: Mario Alioto on behalf of the  
7       indirects.

8               SPECIAL MASTER LEGGE: Yes.

9               MR. ALIOTO: That doesn't moot that  
10      question that your Honor alluded to. I mean, we  
11      have this very fundamental issue here about whether  
12      we have to make some prima facie showing.

13              SPECIAL MASTER LEGGE: No. I understand  
14      that.

15              MR. ALIOTO: That ought to get ruled upon,  
16      in our view, at this point.

17              SPECIAL MASTER LEGGE: Well, I can hold  
18      it, but I can also say I've given a verbal ruling of  
19      no necessity for prima facie case by the plaintiffs.  
20      I'll just put that in my notes.

21              All right. Now, next we have the motion,  
22      related motion, concerning the foreign discovery.  
23      Now, a few thoughts on that.

24              You know, it's obvious from the complaint  
25      that there's a lot of foreign activity. I think it

1 also seems obvious from the venue location of the  
2 defendants in the foreign countries that most of  
3 their business activities and most of the  
4 information is going to come from some foreign  
5 depository. So what foreign -- quote, foreign  
6 discovery is relevant and required to be produced?

7 Now, as I understand Hitachi's position,  
8 they're saying that they will produce documents if  
9 they have a relationship to U.S. commerce, wherever  
10 those documents may be located.

11 And they appear to state that their only  
12 objection is to information that relates to  
13 foreign -- to purely foreign sales or commerce,  
14 which I gather means a product manufactured in a  
15 foreign country, sold to somebody else in a foreign  
16 country that stayed in the foreign country. There's  
17 a little waffling on that on page 7 of their  
18 October 7th letter, but I think they're really  
19 agreeing to do that.

20 So now what the plaintiffs want here is,  
21 again, a very general thing that says in their  
22 letter of September 10: A motion to compel  
23 discovery of foreign conduct and pricing issues be  
24 granted.

25 However, in describing in their

1       October 21st letter what they're looking for, they  
2       refer to what they got in the HDL case, and they're  
3       saying that it's conversations, communications in  
4       the world to discuss fixing prices of U.S.  
5       customers.

6               So I think, I think we're all agreed that  
7       in order for the information, foreign information to  
8       be relevant, it's got to have something of a show --  
9       there's got to be a showing of some impact on United  
10      States commerce.

11             Now, how do we define that? What do we  
12      say about that? Again, I go back to the fact that  
13      these multiple companies having some definition of  
14      what their businesses were is important. So I think  
15      it is still important to have some proffer there.

16             And also, just give me a little background  
17      education here. I'm not going to make any decisions  
18      based upon what you tell me. But, you know, I had  
19      the general impression that there were no longer any  
20      television sets manufactured in the United States.

21             Is that correct?

22             MR. LEHMANN: Why don't I go to the  
23      podium.

24             SPECIAL MASTER LEGGE: No. You can answer  
25      from right there.

1 MR. LEHMANN: Your Honor, I think  
2 currently within the United States there are no CRT  
3 sets manufactured; but during the entirety of the  
4 class period, there were.

5 SPECIAL MASTER LEGGE: There were.

6 Now, where are computers manufactured?  
7 Are they manufactured in the United States?

8 MR. R. ALEXANDER SAVERI: All over.

9 MR. LEHMANN: I believe that they're  
10 manufactured at various locations all over the  
11 world.

12 SPECIAL MASTER LEGGE: In the United  
13 States?

14 MR. R. ALEXANDER SAVERI: Your Honor, with  
15 that, it depends on the company, for example.

16 SPECIAL MASTER LEGGE: Well, I'm saying,  
17 where are they manufactured?

18 MR. R. ALEXANDER SAVERI: Some are  
19 manufactured in the U.S.

20 SPECIAL MASTER LEGGE: Okay.

21 MR. R. ALEXANDER SAVERI: Some are  
22 manufactured in maquiladora factories on the border  
23 of Mexico and then sent into the U.S., your Honor,  
24 and abroad.

25 SPECIAL MASTER LEGGE: Well, what about

1 the manufacturers of the CRTs? Is that all  
2 occurring abroad? To the extent it's occurring at  
3 all anymore.

4 MR. R. ALEXANDER SAVERI: Yes. But I  
5 think during the period of time of the conspiracy  
6 here, during our relevant period, some were  
7 manufactured here, some were manufactured abroad,  
8 some were then transferred here and put into the  
9 so-called finished product within the integrated  
10 companies and sold into the U.S.

11 So it's both, your Honor. It's  
12 manufactured all over.

13 MR. LEHMANN: Your Honor, can I pinpoint  
14 what I think are the issues relating to the --

15 SPECIAL MASTER LEGGE: No. Let me thrash  
16 around here a little bit in the generalities before  
17 we get to the specifics.

18 What about Hitachi defendants? Are all of  
19 the CRTs made by your manufacturing subsidiaries,  
20 were they all sold to Hitachi-related companies or  
21 did they sell CRTs to other entities, competing  
22 entities?

23 MS. WEBB: They sold both, your Honor.

24 SPECIAL MASTER LEGGE: Both. Sure mushes  
25 it all up, doesn't it?

1 MS. WEBB: Yes.

2 SPECIAL MASTER LEGGE: Sure mushes it all  
3 up. Okay.

4 MS. WEBB: And they purchased CRTs too.

5 SPECIAL MASTER LEGGE: They did?

6 MS. WEBB: Some of them.

7 MR. LEHMANN: And we believe that they  
8 might have sold CRTs to fellow defendants, who then  
9 incorporated them --

10 SPECIAL MASTER LEGGE: Well, that's --

11 MR. LEHMANN: Yeah.

12 SPECIAL MASTER LEGGE: -- convoluted.

13 I didn't think it would be -- I hoped it  
14 might be as neat and clean as Hitachi sold only to  
15 Hitachi, but that's obviously not . . .

16 Okay. So a great deal of what I was going  
17 to ask about in connection to this case is broadly  
18 noted.

19 So I guess we get back to the basic point  
20 of, I think you all agree that under the statutes,  
21 under the cases, that in order to be relevant, it's  
22 got to have some impact on the United States.

23 Now, in order to send them off searching  
24 for things that might have an impact, how do we  
25 define it? How do we define that impact?



1 MR. LEHMANN: Your Honor?

2 SPECIAL MASTER LEGGE: Yeah.

3 MR. LEHMANN: We tried to narrow it or we  
4 were prepared to narrow it by custodians, and  
5 particularly custodians who were involved in these  
6 class meetings overseas that are referenced in both  
7 our complaint and the various DOJ indictments.

8 The issues that we have with what Hitachi  
9 had to say in its opposition letter are, I think,  
10 twofold. I mean, they made the point in one of the  
11 meet-and-confer letters that they were prepared to  
12 give over documents that refer to U.S. sales, refer  
13 to U.S. purchasers, refer to models sold in the  
14 U.S., and refer to -- or business plans that refer  
15 to the U.S. market. All well and fine. We agree on  
16 that.

17 In their opposition letter, they also said  
18 that they would agree to produce documents where  
19 it's ambiguous but that the subject of the document  
20 is foreign or U.S. commerce.

21 And I think that raises some practical  
22 issues, like: Who decides, at the first instance,  
23 whether it's ambiguous or not ambiguous?

24 SPECIAL MASTER LEGGE: Usually it's the  
25 producing party that has to make the first cut.

1 MR. LEHMANN: That's right.

2 SPECIAL MASTER LEGGE: And we all --

3 MR. LEHMANN: And for those documents  
4 withheld on the grounds that they felt it's not  
5 ambiguous, is there going to be any mechanism where  
6 we can dispute that determination and take it to  
7 you?

8 SPECIAL MASTER LEGGE: I don't know what  
9 it would be.

10 MR. LEHMANN: Well, we think that -- we  
11 think that under the case --

12 SPECIAL MASTER LEGGE: Usually, if the  
13 parties don't agree on what the subject matter is to  
14 be searched for or can't identify the documents,  
15 it's usually the judicial tribunal that says:  
16 Here's what you go look for.

17 Once that's defined, then the first cut is  
18 always made by the party who has the documents. And  
19 usually the other side can't challenge that unless  
20 you get some suspicion somewhere, somehow that it's  
21 been fudged.

22 MR. LEHMANN: And one answer --

23 SPECIAL MASTER LEGGE: That's what we live  
24 with. We live with that in discovery.

25 MR. LEHMANN: One answer that's given to

1       that conundrum is the decision in Aspartame, where  
2       there the defendant said that discovery ought to be  
3       limited to those foreign materials that the  
4       defendants determined had a substantial effect on  
5       U.S. commerce.

6               And the Court said: No, we're not doing  
7       it that way. That vests too much discretion in the  
8       defendant.

9               And the Court said:

10              "Though conduct usually plays a  
11       vital" --

12              "Though counsel usually plays a  
13       vital role in discovering [sic] the  
14       relevancy of documents to be produced  
15       in response to a discovery request,  
16       the standard proposed by defendants  
17       is inappropriate.

18              MR. SIMON: Mr. Kessler just took off in  
19       his jet airplane.

20              SPECIAL MASTER LEGGE: Or a toilet just  
21       flushed.

22              I think we're getting some background  
23       noise over the phone. Could you mute your cell  
24       phones, please. Thank you.

25              I'm sorry.

1 MR. LEHMANN: So we think --

2 SPECIAL MASTER LEGGE: I did not hear --  
3 you were quoting from this, and I did not hear the  
4 end of it.

5 MR. LEHMANN: Let me quote what Aspartame  
6 said.

7 "Defendants' suggestion that  
8 discovery be limited to only those  
9 foreign materials that defendants  
10 determined have a substantial effect  
11 on U.S. commerce is not acceptable.  
12 Though counsel usually plays a vital  
13 role in deciding the relevancy of  
14 documents to be produced in response  
15 to a discovery request, the standard  
16 proposed by defendants is  
17 inappropriate."

18 And we think it's inappropriate here as  
19 well.

20 SPECIAL MASTER LEGGE: What do you think  
21 we should do?

22 MR. LEHMANN: I think if it's a situation  
23 where -- yeah, I don't know that you could come up  
24 with any criteria that we and Hitachi would agree on  
25 as to what constitutes ambiguity in this instance.

1           And I think if it's a situation where it  
2           relates to the subject matter of the alleged  
3           conspiracy, it ought to be produced. We can argue  
4           over the weight --

5           SPECIAL MASTER LEGGE: Well, then you're  
6           ignoring the foreign limitation that's applied by  
7           the statute and by the courts.

8           THE WITNESS: Well, the FTAIA applies no  
9           limitation because it's not a discovery statute.

10          SPECIAL MASTER LEGGE: I understand.

11          MR. LEHMANN: We've cited the case law  
12          that deals with it. And we've also cited  
13          post-Empagran and post-2000 cases, like Aspartame,  
14          Auto Paint, and Urethanes.

15          SPECIAL MASTER LEGGE: What do you want me  
16          to say?

17          MR. LEHMANN: What I want you to --

18          SPECIAL MASTER LEGGE: If I grant your  
19          motion after we've identified what and where, this  
20          gets down to foreign.

21          MR. LEHMANN: What I want you to say --

22          SPECIAL MASTER LEGGE: What do I say about  
23          foreign?

24          MR. LEHMANN: What I want you to say is  
25          that within the defined topics we have and the

1 defined custodians, we get the documents relevant to  
2 the claimed conspiracy.

3 We're not asking for them to search every  
4 corner of their foreign corporations.

5 SPECIAL MASTER LEGGE: So you're just  
6 saying ignore the requirement of impact on U.S.  
7 commerce?

8 MR. LEHMANN: No. What I'm saying is that  
9 it may be difficult to tell, for a particular  
10 document, whether it has an impact. And under those  
11 circumstances, the plaintiffs ought to be given the  
12 benefit of the doubt.

13 Let me give you an example. We've alleged  
14 curtailment of plant production across the world,  
15 United States, ex-United States.

16 If they curtailed CRT production in  
17 Malaysia, we would contend that's part of the  
18 conspiracy to limit global output and raise prices.  
19 But if that document reflecting their curtailment of  
20 production makes no mention of the United States,  
21 should that be a reason we don't get it?

22 SPECIAL MASTER LEGGE: We'll get to trial.  
23 When we get to trial, you want to introduce that  
24 document, and they say: Well, this has nothing to  
25 do with U.S. commerce. Is that going to get in?

1 MR. LEHMANN: Sure.

2 MR. GUIDO SAVERI: Yes, absolutely.

3 MR. LEHMANN: They would.

4 SPECIAL MASTER LEGGE: At what point in  
5 the case, then, do we apply the requirement that  
6 it's got to have an impact on U.S. commerce?

7 MR. SIMON: I can answer that question, I  
8 think, your Honor, because if there's a split of  
9 authority on that, defendants often argue that you  
10 can decide the FTAIA issue on a motion to dismiss,  
11 even a 12(b)(1) motion.

12 And some courts say that you don't even  
13 get to that until the merits are determined because  
14 the domestic commerce impact is part of the merits  
15 claim that has to be proven as part of the Sherman 1  
16 claim.

17 SPECIAL MASTER LEGGE: So we roll it up  
18 and give the jury an instruction?

19 MR. SIMON: Yep.

20 SPECIAL MASTER LEGGE: Wonderful.

21 MR. LEHMANN: I'll give you another  
22 perfect example.

23 SPECIAL MASTER LEGGE: Wonderful.

24 MR. LEHMANN: These glass meetings that we  
25 claim occurred in foreign countries at which the

1 conspiracy is hatched, what if you've got a record  
2 of that glass meeting where the U.S. purchasers and  
3 products aren't mentioned; there are just references  
4 generally to 14-inch, 21-inch tubes with no  
5 indication which models they are. The U.S. doesn't  
6 appear in name in the course of that meeting, but it  
7 clearly is one at which the prices are fixed. I  
8 think that's a document that we should get --

9 MS. WEBB: And, your Honor --

10 MR. LEHMANN: -- even though there's no  
11 clear reference to U.S. commerce.

12 SPECIAL MASTER LEGGE: I hear what you're  
13 saying. Well, so what you would say -- I think what  
14 you're telling me is that in an order compelling  
15 them to produce documents, that there be no  
16 limitation in that defined document order, defined  
17 discovery order, making any reference at all to the  
18 necessity for impacting the United States.

19 MR. LEHMANN: Yes. And I have examples  
20 for that.

21 The perfect one is, again, Urethanes.  
22 Court makes the point. You could have a document  
23 discussing the fixing of prices in Africa. No  
24 mention of the United States. But that's an  
25 appropriate topic for discussion in connection with



1 the global conspiracy to fix the prices of  
2 urethanes.

3 Auto refinishing paint. You could have  
4 minutes of a meeting of the European Council of the  
5 Paint Printing & Ink --

6 SPECIAL MASTER LEGGE: And so the  
7 requirements of impact on U.S. commerce would not be  
8 resolved till the issue is submitted to a jury with  
9 a jury instruction.

10 MR. LEHMANN: To the jury. Potentially  
11 it's summary judgment. But, you know, we feel -- I  
12 mean, this is discovery, your Honor.

13 SPECIAL MASTER LEGGE: I know. I know.  
14 I'm just saying how this plays out.

15 MR. SCARBOROUGH: Your Honor, this is Mike  
16 Scarborough for the Samsung, SDI defendants.

17 Having just recently argued one of those  
18 motions, that is --

19 SPECIAL MASTER LEGGE: I'm sorry. Which  
20 motion?

21 MR. SCARBOROUGH: A motion under the  
22 FTAIA. A dispositive motion --

23 SPECIAL MASTER LEGGE: For what? A motion  
24 for summary judgment or a discovery order or what?

25 MR. SCARBOROUGH: It's a little bit of a

1 strange animal. The motion actually I just argued  
2 was called a -- you can make either a facial or a  
3 factual challenge to the Court's subject matter  
4 jurisdiction.

5 But that's what the FTAIA is. It's a  
6 substantive limit on what the Court can hear and  
7 what it can't hear.

8 And what we've just heard described by the  
9 plaintiffs is a very novel -- and so far, no court  
10 has really bought into it -- view of the FTAIA as  
11 part of an element of a claim.

12 The overwhelming -- let me finish, Bruce.

13 The overwhelming authority on the FTAIA  
14 says it's a jurisdictional statute. And defendants  
15 can challenge that by a facial or a factual  
16 challenge to subject matter jurisdiction.

17 And there's just -- there's no way that --

18 SPECIAL MASTER LEGGE: How does that play  
19 into discovery?

20 MR. SIMON: It doesn't. It doesn't affect  
21 discovery.

22 SPECIAL MASTER LEGGE: I'm asking him the  
23 question.

24 MR. SCARBOROUGH: How it plays into  
25 discovery, your Honor, let me give you a little bit

1 more -- you asked some basic questions about how  
2 some of these markets work.

3 I think it is useful to look at the  
4 differences, let's say, between the tubes that go  
5 into TVs and the tubes that go into monitors. The  
6 markets there, just to really oversimplify things,  
7 are somewhat different.

8 Generally, on a very general basis, the  
9 markets for monitors are much more international in  
10 nature, basically because they're much smaller,  
11 generally, they're easier to ship and, generally,  
12 there are fewer tariffs that are associated with  
13 that; whereas the markets for the tubes that go into  
14 TVs are much more regional.

15 And generally, where -- because they're  
16 generally bigger tubes and the end product is much  
17 bigger, it's not as efficient to ship them. The  
18 tariffs are much higher. And so, generally, you  
19 have very regional markets for those.

20 So let's say, for instance, in Europe, a  
21 variety of defendants had manufacturing plants for  
22 the tubes that went into TVs in Europe themselves.  
23 Then, to the extent those were turned into finished  
24 products, that was done in Europe, and those  
25 products all stayed within Europe. So we know that

1 for those types of products, they never, ever came  
2 anywhere close to the U.S. That was a regional  
3 market for those types of tubes.

4 We have no business turning over those  
5 offices, looking into all of those custodians, doing  
6 the kind of unlimited discovery that the plaintiffs  
7 are asking for with respect to those markets. We  
8 know up-front this has nothing to do with the U.S.

9 And they're asking you to have literally a  
10 completely limitless standard for completely  
11 worldwide discovery.

12 SPECIAL MASTER LEGGE: All right. Well,  
13 let me ask you the question. Okay. Suppose I say,  
14 okay, I'm going to issue an order that compels you  
15 to make some productions here but I agree with you  
16 that you shouldn't have to produce anything that  
17 doesn't impact U.S. commerce. What do I say?

18 MS. WEBB: Well, your Honor, to the  
19 extent -- and this is a motion against Hitachi.

20 To the extent we are reviewing documents  
21 and identifying documents that have to do with  
22 sales -- let's take the example of HAS. And HAS  
23 never sold into the United States -- that has to do  
24 with a tube or finished product that was  
25 manufactured in Asia, that can be ascertainably

1 traced to having stayed in Asia, being sold into the  
2 Asian market, that shouldn't be produced.

3 To use the example of the purported  
4 conspiracy price-fixing meeting, if the document  
5 doesn't say "We're talking about Asia prices" or  
6 "We're talking about U.S. prices," as we offered in  
7 our letter brief, we'll produce it. It's ambiguous.  
8 So of course they get that document.

9 Likewise, sales and transactional data  
10 that can't be identified as being tied to a  
11 particular non-U.S. market or a non-U.S. purchaser  
12 will be produced.

13 And that's a lot of information, your  
14 Honor.

15 MR. GUIDO SAVERI: But I think, your  
16 Honor, if I may make an observation about what  
17 Mr. Scarborough said -- and I know what he's talking  
18 about because we're in the same case in front of  
19 Wilkins, and that's what he's talking about.

20 There's a difference between evidence of a  
21 conspiracy. What is the conspiracy? Evidence of  
22 the conspiracy, that should be produced. And even  
23 though it may relate to some foreign company, at  
24 least it may be relevant to get in.

25 There's a different problem on whether the

1 sales -- not the evidence of the conspiracy. That  
2 should be produced -- but whether the sales are  
3 within the jurisdiction of the Court for damage  
4 purposes.

5 SPECIAL MASTER LEGGE: Or are actionable.

6 MR. GUIDO SAVERI: Maybe -- right. If  
7 this bottle is foreign, I don't get damages on it  
8 under the FTAIA if that's it.

9 But if there's an evidence of a conspiracy  
10 that involves everything, even though it might  
11 involve a worldwide conspiracy, I'm entitled to show  
12 that. I may not get damages, but I'm entitled to  
13 show that conspiracy. Otherwise, I'm being  
14 precluded.

15 And Continental Oar goes back, that we  
16 went back I don't know how many years to get  
17 evidence that is relevant to the conspiracy.

18 So there's a distinction between that.  
19 And when you look at -- Mr. Lehmann will talk about  
20 what the indictments that came out about the  
21 meetings that the government alleges about the  
22 meetings in Korea and Taiwan and Malaysia and China  
23 and elsewhere to discuss the prices.

24 SPECIAL MASTER LEGGE: Are you talking  
25 about the copy you sent me yesterday?

1 MR. LEHMANN: Yeah. They refer to  
2 meetings, communications, conversations in Taiwan,  
3 Korea, Asia, Malaysia, China, across the world  
4 relevant to this overall international conspiracy.  
5 And we certainly think we ought to be able to get  
6 the evidence relating to all of those.

7 There's another issue here, though, your  
8 Honor, that I think we need to address. There are  
9 defenses to the FTAIA, even assuming arguendo that  
10 it's applicable in this case.

11 One of them is the domestic effects  
12 exception, which turns on the issue of the  
13 interrelationship between the foreign conduct and  
14 effects in the U.S.

15 And how are we able to mount that defense  
16 if we're going to be denied any discovery with  
17 respect to the foreign conduct that they claim has  
18 no impact?

19 I think the way the courts typically do  
20 this in the context of international antitrust  
21 cartels is they err on the side of liberality and  
22 they give the plaintiff extensive discovery.

23 Now, I agree with you. We want to do this  
24 in a way that's justifiable. So what we're  
25 proposing to do is to limit it by custodian and to

1 focus on the meetings, bilateral and multilateral  
2 meetings that occurred in these foreign countries  
3 and the activities that flowed out of them.

4 That's how we plan to do it with the  
5 custodians. That's how we plan to try to limit the  
6 burden that has been described here. And I think,  
7 your Honor, that that's a reasonable alternative  
8 approach, a compromise here that solves it.

9 And the other point I would make, your  
10 Honor, is you've seen their discussion of how many  
11 documents that are at issue. They obviously view it  
12 as a significant number.

13 In the context of other cases and in the  
14 context of what typically happens in antitrust cases  
15 and in the context of the 1.2 million documents that  
16 Hitachi entities produced in LCDs, we're not talking  
17 about a huge number of documents here. This is  
18 manageable.

19 MS. WEBB: Your Honor, we would be more  
20 than happy to sit down and talk about if we can  
21 reach a compromise on a list of custodians.

22 That's actually what I thought we were  
23 going to do at some point in the meet-and-confer.

24 SPECIAL MASTER LEGGE: Even as to this  
25 foreign issue?



1 MS. WEBB: Yes, your Honor. We proposed  
2 some ways in which to make determinations about  
3 documents. Custodians is one way.

4 But continuing the meet-and-confer  
5 process, I think, is probably the most fruitful way  
6 for both parties to get a handle on this and figure  
7 out if they can reach an agreement.

8 MR. SCARBOROUGH: And, your Honor, if I  
9 can just add. If you issue an order on a motion to  
10 compel that says everything around the world is in,  
11 it counts, there's really no incentive on the  
12 plaintiffs' side to cut down the number of  
13 custodians they want. They're working from a  
14 position of complete strength. They can insist on  
15 custodians all over the world. We've got nothing to  
16 bargain with in terms of appropriate number of  
17 custodians.

18 SPECIAL MASTER LEGGE: No, I understand  
19 what you're saying.

20 MR. LEHMANN: There's actually one  
21 incentive, your Honor. It's going to cost us.  
22 We're going to make a judicial use of our  
23 resources -- judicious use of our resources here,  
24 and we're not going to ask for 5,000 custodians  
25 across the world.

1           SPECIAL MASTER LEGGE: I have a motion in  
2 front of me. Unless you two sides agree to continue  
3 or defer the motion while you talk about the  
4 custodian process, I've got to ignore what you're  
5 telling me about it and go ahead and rule on the  
6 motion.

7           MR. SIMON: Can I make one point in  
8 response to what Mr. Scarborough said?

9           As you pointed out at the very beginning  
10 here, some of these things you're deciding today  
11 could have --

12           SPECIAL MASTER LEGGE: I understand.

13           MR. SIMON: -- overall chain effects.

14           SPECIAL MASTER LEGGE: This one is very  
15 significant to a lot of international companies, and  
16 I don't know anything about their burdens. I'm  
17 having a hard time coming to, getting to the ground  
18 of Hitachi's burdens.

19           MR. SIMON: And I just argued a case this  
20 year too in front of the Seventh Circuit Court of  
21 Appeals on this very issue. And they have an  
22 opinion there called United Phosphorus which  
23 supports what Mr. Scarborough was saying.

24           But the first question from the panel to  
25 me when I stood up was: Should we reconsider our

1 position in United Phosphorus because the element of  
2 the Sherman claim that requires you to prove  
3 domestic effect is there, and you can only prove  
4 that based on the merits.

5 There's a case called Hartford Fire which  
6 says that, that it's an element of the Sherman claim  
7 and that the FTAIA hasn't changed the elements of  
8 the Sherman 1 claim and, therefore, it's a matter of  
9 timing.

10 Don't allow a drive-by jurisdictional  
11 decision decided on the merits and cut it out when  
12 you have the full discovery record. And that's the  
13 opposite side of what Mr. Scarborough argues, and  
14 we're on opposite sides of that.

15 But that's a very important decisions in  
16 that cases go both ways.

17 SPECIAL MASTER LEGGE: If you both tell me  
18 that you want to continue discussing it, that's what  
19 you're doing, or resume discussions based upon a  
20 custodian-based approach, I'll defer. But if you  
21 don't agree on that, doing that, then I've got to go  
22 ahead and rule on a motion.

23 MR. R. ALEXANDER SAVERI: Your Honor,  
24 custodians is one thing. In other words, who are  
25 the people that are producing the documents?

1 SPECIAL MASTER LEGGE: That's right.

2 MR. R. ALEXANDER SAVERI: But then once  
3 they get the document, that's where we need the  
4 guidelines. Is it in or is it out? And that's  
5 what --

6 SPECIAL MASTER LEGGE: No.

7 MR. R. ALEXANDER SAVERI: -- this FTAIA  
8 deals with.

9 SPECIAL MASTER LEGGE: That's right. But  
10 if you agree on custodians, you are postponing any  
11 necessity for anybody deciding what to do with the  
12 Act. Okay?

13 I may have to -- Conti may have to deal  
14 with it on summary judgment motion, maybe get a  
15 motion from them on jurisdiction. I don't know what  
16 you're going to get.

17 It doesn't have to be ruled upon if you  
18 folks agree that we're going to go to these  
19 custodians and everything they've got that's  
20 relevant to the subject matter gets produced.

21 Then the issue gets swept under the rug  
22 until the next time it has to be decided.

23 MR. R. ALEXANDER SAVERI: But is that  
24 regardless of whether it impacts the U.S. or not?

25 SPECIAL MASTER LEGGE: Yes.

1 MR. R. ALEXANDER SAVERI: If they agree.

2 But they won't agree to that.

3 SPECIAL MASTER LEGGE: Well, I don't know.

4 MS. WEBB: Well, I don't know. We haven't  
5 even discussed custodians.

6 MR. GUIDO SAVERI: Well, what is there to  
7 discuss? He just said it. Will you agree, if it  
8 doesn't affect the impact, that you will give it to  
9 us?

10 MS. WEBB: Well, if you're going to  
11 want --

12 MR. GUIDO SAVERI: What's the big deal?

13 MS. WEBB: -- 300 custodians --

14 MR. R. ALEXANDER SAVERI: But the numbers,  
15 we can come back to court on.

16 MS. WEBB: -- no, I'm not going to waive  
17 these objections because that isn't a narrowing of  
18 the discovery.

19 If it's a reasonable number of custodians  
20 and it's going to -- we're going to be able to  
21 identify them and collect documents from them, then,  
22 absolutely, we would do that.

23 But the slicing and dicing about, you  
24 know, conspiratorial meetings versus transactional  
25 data, I think that has very important ramifications

1       because, you know, relevant discovery is twofold.  
2       It's relevant to the allegations, and it also has to  
3       lead to admissible evidence.

4               We are willing to meet and confer on a  
5       custodian basis.

6               MR. GUIDO SAVERI: Whether it's admissible  
7       or not is for the Court at the time of the trial.  
8       But it is discoverable if it is relevant or may be  
9       relevant. Whether it gets in or not is not the  
10      issue.

11              SPECIAL MASTER LEGGE: Hang on a minute.

12              In a minute here, I'm going to defer -- or  
13      adjourn just for five minutes and let you folks do a  
14      little talking about it.

15              MR. KESSLER: Your Honor, this is  
16      Mr. Kessler. If I could just say one minute on  
17      something in case you have to reach this issue --

18              SPECIAL MASTER LEGGE: Yes.

19              MR. KESSLER: -- which is that with the  
20      standpoint of the other defendants, I would just ask  
21      that the issue for Hitachi also be decided in the  
22      context of the specific burdens and issues that  
23      they've raised, because other defendants could be in  
24      very different situations, including with respect to  
25      the custodian issue.

1           To give you an example, to me the issue is  
2           the following: If, for example, there's a business  
3           that only sells televisions in Europe and that's  
4           what they do and that's the only jurisdiction of the  
5           custodians, then the issue becomes: What is the  
6           burden of having those types of people required to  
7           do document searches versus the likelihood they're  
8           going to find anything of the type of documents that  
9           plaintiffs are talking about?

10           So I guess however your Honor rules, it  
11           has to leave room for that type of negotiation and  
12           issues to be addressed, because I think everybody  
13           agrees that if a document is relevant and  
14           responsive, then wherever it is, it should be  
15           produced.

16           But there's another argument about where  
17           is it reasonable to search for these documents,  
18           given the fact if you have a lot of people who have  
19           no involvement in selling products to the United  
20           States or discussing the United States or being  
21           involved in global sales, but solely are involved in  
22           local markets, whether it makes any sense to put the  
23           burden on defendants to search there.

24           And I think that's just a point I wanted  
25           to make so you can be sensitive to that if you have

1 to write about this.

2 SPECIAL MASTER LEGGE: Okay. Well, as I  
3 understand, just to state it my way, you're pointing  
4 out to me that different defendants can have  
5 different considerations about different burdens.  
6 And so this is one area, if I make a ruling, I've  
7 got to be sure I'm ruling as to what's in front of  
8 me with respect to Hitachi and not something that is  
9 going to be applied to all the other defendants  
10 without their opportunity to be able to discuss  
11 burden.

12 MR. KESSLER: Thank you, your Honor.  
13 That's my point.

14 SPECIAL MASTER LEGGE: Okay. Now let me  
15 get back to what I do have.

16 I'm going to break here for a few minutes  
17 in just a minute to let you two talk to see if you  
18 want to continue discussions of this issue in a  
19 meet-and-confer.

20 But before I do that, I want to frame what  
21 you want me to do. Now, with respect to the  
22 plaintiffs, I understand you want a discovery order  
23 that does not refer to impact being an issue at all.  
24 Okay? That's my understanding.

25 MR. R. ALEXANDER SAVERI: Correct, your



1 Honor.

2 SPECIAL MASTER LEGGE: Oversimplification,  
3 but I think it's . . .

4 Defendant, if I enter an order, what do  
5 you want the order to say? How do you want it to be  
6 phrased?

7 MS. WEBB: We want the order to narrow the  
8 scope of discovery such that it would only relate to  
9 those documents that have an impact on U.S. commerce  
10 and affect U.S. commerce.

11 And to articulate that and put a little  
12 flavor on that, your Honor, it would be along the  
13 lines of those sales that were direct into the  
14 United States and into U.S. purchasers.

15 Now, that refers to transactional and  
16 sales documents.

17 With respect to --

18 SPECIAL MASTER LEGGE: Just a second.

19 MS. WEBB: Sure.

20 SPECIAL MASTER LEGGE: Okay.

21 MS. WEBB: With respect to plaintiffs'  
22 requests that have to go -- that go to the issue of  
23 competitor meetings, I think as a practical matter,  
24 your Honor, competitor meetings are going to be  
25 produced in this litigation regardless of where the

1 meeting took place or regardless of the discussions,  
2 because I don't think, to the extent that they  
3 exist, that there's going to be the ability to  
4 differentiate.

5 SPECIAL MASTER LEGGE: Yeah.

6 Okay. Now let me take a five-minute  
7 recess.

8 Question for you guys: Do you want me to  
9 rule, or do you agree to continue this issue for  
10 more meet-and-confer? That's your question.

11 MS. WEBB: Okay. Thank you, your Honor.

12 MR. SIMON: Your Honor, can we ask you a  
13 question?

14 SPECIAL MASTER LEGGE: Yes.

15 MR. SIMON: Do you think you want to go  
16 much past 5:30, or do you think we can wrap up  
17 everything else in a half an hour?

18 SPECIAL MASTER LEGGE: Well, we have the  
19 time period question. I want a little discussion on  
20 that.

21 On the question of the translations, I  
22 don't know what more you have to say that hasn't  
23 already been reached.

24 So I would guess the whole thing would be  
25 another half-hour, no later than another hour. But

1       that's just my guess.

2               MR. LEHMANN:   Actually, your Honor, can we  
3       get ten minutes?

4               SPECIAL MASTER LEGGE:   Ten minutes.  
5       Ten-minute recess.

6               (Recess taken.)

7               SPECIAL MASTER LEGGE:   Let's go back on  
8       the record.

9               Now, the question before the house is  
10       whether counsel for the plaintiffs and counsel for  
11       Hitachi want to continue or -- whatever the status  
12       is -- continue or begin to meet and confer with  
13       respect to this issue of foreign sales information.

14              MR. R. ALEXANDER SAVERI:   Your Honor, if I  
15       may --

16              SPECIAL MASTER LEGGE:   Or do you wish to  
17       submit the matter to me now for decision?

18              MR. R. ALEXANDER SAVERI:   Thank you, your  
19       Honor.   Rick Saveri on behalf of the direct  
20       purchaser plaintiffs.

21              If I may, we've met and conferred right  
22       now in the hallway with counsel for Hitachi, and I  
23       think we've generally reached an understanding of  
24       how to proceed here and where we're going.

25              As far as the FTAIA issue, this foreign

1       conduct issue, we will agree to push this off to  
2       another date and work out a custodian-based approach  
3       to get at documents.

4               And with the custodian-based approach,  
5       your Honor, that would be that we would get from the  
6       defendants, the Hitachi defendants, which we haven't  
7       gotten to date, which are organizational charts --  
8       this is what --

9               SPECIAL MASTER LEGGE: Is that the same  
10       organizational chart they'd give you in the  
11       meet-and-confer with respect to the prior motion?

12              MS. BRASS: It overlaps, your Honor.

13              MR. R. ALEXANDER SAVERI: It could  
14       overlap. That's a proffer.

15              We're talking about corporate  
16       organizational charts that most companies -- all the  
17       other defendants have been producing to us.

18              And what we're doing with the other  
19       defendants is that we get the defendants'  
20       organizational charts back to 1995 and that they  
21       also identify -- and this is what's key, your  
22       Honor -- that they identify the people with pricing,  
23       marketing, and sale authority. And that is  
24       Interrogatory No. 2.

25              And the Hitachi defendants so far have

1 objected to that interrogatory and not identified  
2 one person, not only back to '95, but even during  
3 the four-year statute period. So we haven't been  
4 identified anybody who has pricing, marketing, or  
5 sales authority.

6 They will agree --

7 SPECIAL MASTER LEGGE: Wait a minute. I  
8 don't have your interrogatories.

9 MR. R. ALEXANDER SAVERI: Let me get them.  
10 We attached them --

11 SPECIAL MASTER LEGGE: So I don't know how  
12 to put this into an order.

13 MR. R. ALEXANDER SAVERI: I did attach --

14 SPECIAL MASTER LEGGE: If you agree, if  
15 you agree.

16 MR. R. ALEXANDER SAVERI: Well, if I may,  
17 your Honor, the interrogatory is attached to my  
18 declaration, but I can give you another set right  
19 now before we leave.

20 SPECIAL MASTER LEGGE: Oh, it's in here?

21 MR. R. ALEXANDER SAVERI: Yes, but I have  
22 a complete set of them right here, your Honor. I'm  
23 happy to give them to you.

24 SPECIAL MASTER LEGGE: Well, let's go  
25 ahead verbally here.

1 MR. R. ALEXANDER SAVERI: Okay. And so  
2 what we propose, your Honor, is in two weeks that  
3 the Hitachi entities, all Hitachi defendants --  
4 that's all five entities -- provide us their  
5 organizational charts back to 1995; they also  
6 identify the individuals at those companies who had  
7 pricing, marketing, and sale authority back to 1995.

8 SPECIAL MASTER LEGGE: Wait a minute.  
9 Pricing? Sales?

10 MR. R. ALEXANDER SAVERI: Sales and  
11 marketing.

12 SPECIAL MASTER LEGGE: And marketing  
13 authority. Okay.

14 MR. R. ALEXANDER SAVERI: Yes.

15 SPECIAL MASTER LEGGE: Okay.

16 MR. R. ALEXANDER SAVERI: And then they  
17 provide us that information in two weeks, your  
18 Honor.

19 One week after that, the Hitachi entities,  
20 they go back, they talk to their clients, and they  
21 come up with a list of custodians.

22 We will also come up with a list of  
23 custodians, and we will mutually exchange them.

24 This is what we are doing with the other  
25 defendants, and it's been very successful, your

1 Honor.

2 And then once we get the lists, we sit  
3 down and meet and confer, and we say: Why is  
4 Mr. Smith on the list? Oh, you don't want him.

5 And then we come up with an agreed list,  
6 after reviewing their production of names and they  
7 get our production of names.

8 What I understand is that the Hitachi  
9 entities will not provide a list and they haven't  
10 provided a list and they've objected unless they get  
11 an order from your Honor.

12 MS. WEBB: Well, actually, it was until  
13 plaintiffs produced the list that they said they  
14 were going to produce. But, yes, your Honor, that's  
15 pretty much.

16 My situation is I could not agree to do  
17 that, your Honor.

18 SPECIAL MASTER LEGGE: Do what?

19 MS. WEBB: To provide a custodian list of  
20 potential relevant custodians voluntarily to the  
21 plaintiffs at this point.

22 SPECIAL MASTER LEGGE: At this point --

23 MS. WEBB: At this point.

24 SPECIAL MASTER LEGGE: -- you cannot do  
25 that?

1 MS. WEBB: I don't have authority from my  
2 client to do that, your Honor.

3 MR. R. ALEXANDER SAVERI: But if your  
4 Honor orders it, we will exchange lists mutually, at  
5 the same time.

6 Hitachi will come forward saying: Here  
7 are the people that we know that have relevant  
8 material. We'll come forward with our list and say:  
9 Here are the people that we understand have relevant  
10 material. And then we'll sit down and come up with  
11 an appropriate list.

12 SPECIAL MASTER LEGGE: Does my doing that  
13 as an order take you off the hook?

14 MS. WEBB: It will get done, your Honor.

15 SPECIAL MASTER LEGGE: All right.

16 MR. R. ALEXANDER SAVERI: That's been the  
17 big impasse, your Honor.

18 MS. WEBB: But I would add, in terms of  
19 answering interrogatories, I think we're going to  
20 need four weeks, given --

21 MR. R. ALEXANDER SAVERI: That's fine.

22 MS. WEBB: -- there are five entities  
23 and --

24 SPECIAL MASTER LEGGE: What?

25 MS. WEBB: We would need three weeks in



1 order to provide information pursuant to  
2 interrogatory No. 2.

3 MR. R. ALEXANDER SAVERI: That's the  
4 pricing, marketing, and sale people, your Honor.

5 SPECIAL MASTER LEGGE: Three weeks.

6 MR. R. ALEXANDER SAVERI: Yeah. That's  
7 agreeable with us, your Honor.

8 SPECIAL MASTER LEGGE: Then one week after  
9 that, mutual exchange of the list of custodians?

10 MR. R. ALEXANDER SAVERI: Correct.

11 SPECIAL MASTER LEGGE: One week after  
12 that, meet and confer. Right? Is that what you  
13 said?

14 MR. R. ALEXANDER SAVERI: Yes, your Honor.  
15 There we are, and that would be it.

16 MS. WEBB: But this is all being done in  
17 the context of not waiving any of the objections  
18 that we've raised in our discovery.

19 SPECIAL MASTER LEGGE: No, because, you  
20 see, you put me in a position where in order to make  
21 it work, I have to make it an order.

22 MS. WEBB: Well, no, no, no. I under- --

23 SPECIAL MASTER LEGGE: So it's an order,  
24 and certainly you're not waiving a single thing.

25 MS. WEBB: Right. Nor are plaintiffs

1       waiving any of their arguments in terms of -- you  
2       know, we're going to work out, I hope, the scope of  
3       what's going to be produced by this mechanism.

4               SPECIAL MASTER LEGGE:   Then after that,  
5       one week report to me.

6               MR. R. ALEXANDER SAVERI:   That'd be  
7       perfect, your Honor.

8               SPECIAL MASTER LEGGE:   All right.

9               MR. R. ALEXANDER SAVERI:   And I think that  
10       would then take care of both the time period motion  
11       that we filed as well as the foreign --

12              SPECIAL MASTER LEGGE:   I was just going to  
13       ask you that.

14              MR. R. ALEXANDER SAVERI:   Yes, it would, I  
15       think.

16              MS. WEBB:   I believe it would, your Honor.

17              MR. R. ALEXANDER SAVERI:   Because that was  
18       the dispute, your Honor, to get the org charts, the  
19       identification of pricing people, and then a mutual  
20       exchange.   So we've agreed to that.

21              SPECIAL MASTER LEGGE:   Okay.   All right.

22              Now, so I understand this, as to 5 and 6,  
23       I will prepare an order.   I guess all I need to do  
24       is direct that within three weeks, defendant Hitachi  
25       produces organizational charts and identify the

1 people with authority, and the companies, for  
2 pricing, sales, and marketing.

3 MR. R. ALEXANDER SAVERI: And that would  
4 be Interrogatory No. 2, your Honor.

5 SPECIAL MASTER LEGGE: Back to 1995.

6 MR. R. ALEXANDER SAVERI: That's correct,  
7 1995.

8 SPECIAL MASTER LEGGE: All right. Three  
9 weeks, whatever that date is.

10 One week later, a mutual exchange of lists  
11 of custodians.

12 One week after that, a meet-and-confer for  
13 it to discuss possible agreement on production by  
14 custodians.

15 MR. R. ALEXANDER SAVERI: That's right,  
16 your Honor.

17 SPECIAL MASTER LEGGE: One week after  
18 that, report to me.

19 MS. WEBB: Including the scope of what the  
20 production would be.

21 SPECIAL MASTER LEGGE: Pardon me?

22 MS. WEBB: The number of custodians, your  
23 Honor, and the scope of the production.

24 SPECIAL MASTER LEGGE: Okay.

25 MR. R. ALEXANDER SAVERI: And just so

1 we're clear, the indirects, are you on with that  
2 agreement?

3 MR. ALIOTO: Yeah.

4 Your Honor, I don't know if you want to  
5 make note of this in your -- Mario Alioto for the  
6 indirects.

7 I don't know if you want to note this in  
8 your order or not, but maybe I ought to just get it  
9 on the record.

10 The indirects also have an interest in  
11 discussing this transaction data. We have a little  
12 special wrinkle in our case where we're dealing with  
13 finished products. So I assume that's going to be  
14 part of our discussions as well.

15 MS. WEBB: Well, we had already agreed to  
16 produce finished products data, but we can continue  
17 that discussion.

18 MR. ALIOTO: If you say on the record that  
19 we're going to discuss that as part of this  
20 meet-and-confer, that's all I'm asking.

21 MS. WEBB: Right.

22 MS. RUSSELL: Sorry. If I may just,  
23 there's an additional issue -- sorry. Lauren  
24 Russell an behalf of the indirect purchaser  
25 plaintiffs.

1           There's the issue on finished product  
2     data, but there's also the issue on foreign data for  
3     both finished products and CRT tubes.

4           And the indirect purchaser plaintiffs, we  
5     have asked for, and so far Hitachi has refused to  
6     produce, worldwide transactional data for CRTs and  
7     finished products.

8           And maybe we are going to continue to talk  
9     about that, or --

10          MS. WEBB: I think we should continue to  
11     talk about that to see, first, if we can work out  
12     this custodian list and then what's left over.

13          MR. R. ALEXANDER SAVERI: I really think,  
14     Diane, we will be able to work that out.

15          SPECIAL MASTER LEGGE: Yeah, don't you  
16     think the custodian list will subsume that?

17          MS. RUSSELL: Well, no. Generally  
18     speaking, transactional data is stored in a more  
19     central location. It's not -- you know, it wouldn't  
20     be in a particular custodian's files necessarily.  
21     Certainly not a complete, you know, transact- -- you  
22     know, companies tend to have databases that they  
23     store this stuff in.

24          MR. R. ALEXANDER SAVERI: That's really an  
25     accounting, database issue, your Honor.

1 MS. RUSSELL: Yeah.

2 SPECIAL MASTER LEGGE: Okay.

3 MS. RUSSELL: It's a slightly separate  
4 issue.

5 SPECIAL MASTER LEGGE: Well, then my order  
6 will not include any of the notes I've made on our  
7 prior discussion on the document dealing with -- on  
8 the motion dealing with the foreign matters.

9 MR. R. ALEXANDER SAVERI: That's correct.

10 SPECIAL MASTER LEGGE: I've made some  
11 notes as I went along. But I'm bypassing all this  
12 and just issuing this order.

13 MR. R. ALEXANDER SAVERI: That would be  
14 correct, your Honor.

15 SPECIAL MASTER LEGGE: All right. I may  
16 do that as a separate order while I'm thinking about  
17 the other motions.

18 MR. R. ALEXANDER SAVERI: That might be  
19 best, your Honor. Then also counsel for Hitachi can  
20 get that back to her client.

21 SPECIAL MASTER LEGGE: Yeah. Okay. All  
22 right.

23 MS. WEBB: That's fine, your Honor. So if  
24 we could have this run from three weeks --

25 MR. R. ALEXANDER SAVERI: From the

1 issuance of the order, please.

2 MS. WEBB: -- from the date of your order,  
3 please.

4 SPECIAL MASTER LEGGE: Yes. Oh, yes, yes.  
5 So I'll prepare a separate order on this one.

6 Okay.

7 MR. R. ALEXANDER SAVERI: Thank you, your  
8 Honor.

9 MS. WEBB: Thank you very much, your  
10 Honor.

11 SPECIAL MASTER LEGGE: All right. So you  
12 believe that will take care -- at least this will --  
13 you will continue discussions on the motions dealing  
14 with foreign information, that is, foreign sales  
15 information, and dealing with --

16 MS. WEBB: The temporal scope.

17 SPECIAL MASTER LEGGE: -- timeline.

18 MS. WEBB: Yes, sir.

19 SPECIAL MASTER LEGGE: Let me make sure,  
20 pass on this quickly.

21 MR. R. ALEXANDER SAVERI: Yes.

22 SPECIAL MASTER LEGGE: On the timeline, I  
23 want to be sure we're all agreed on what dates are  
24 which.

25 As I understand it, the first complaint in

1 this series was filed on November 25th of 2007.

2 MR. R. ALEXANDER SAVERI: Yes.

3 SPECIAL MASTER LEGGE: So the statute of  
4 limitations, absent all other considerations, would  
5 be November 23rd, 2003.

6 MS. WEBB: Correct, your Honor.

7 SPECIAL MASTER LEGGE: The conspiracy  
8 you're alleging in your complaint is March 1st of  
9 1995.

10 MR. R. ALEXANDER SAVERI: Correct, your  
11 Honor.

12 SPECIAL MASTER LEGGE: You want discovery  
13 to start, that is, to go back as far as January 1st  
14 of 1995. But then with respect to transactional  
15 data, back to January of 1991.

16 MR. R. ALEXANDER SAVERI: That's correct,  
17 your Honor. And if I may just put a little  
18 information on that.

19 SPECIAL MASTER LEGGE: Yeah. I guess  
20 transactional data means sales, pricing, shipping.

21 MR. R. ALEXANDER SAVERI: Exactly, your  
22 Honor.

23 SPECIAL MASTER LEGGE: All that stuff  
24 that's in the accounting department?

25 MR. R. ALEXANDER SAVERI: Right. And that



1 information, your Honor, goes to the economists and  
2 the experts which we proffer for impact and damages.

3 And the reason that the courts award the  
4 transactional data --

5 SPECIAL MASTER LEGGE: You have to have  
6 data on a pre-conspiracy --

7 MR. R. ALEXANDER SAVERI: There you are.

8 SPECIAL MASTER LEGGE: Okay.

9 MR. R. ALEXANDER SAVERI: The pre-data of  
10 what is the competitive benchmark. And then you  
11 compare it to the conspiratorial prices, and you get  
12 a damage. You get the area under the curve and you  
13 get a damage.

14 SPECIAL MASTER LEGGE: All right. Now,  
15 the final motion is the motion to compel Chunghwa to  
16 produce all document translations it has provided to  
17 the plaintiffs.

18 Now, first of all, I should tell you, the  
19 Antitrust Division called me on November 2nd -- this  
20 was back before our hearing was deferred by the more  
21 important Giants game -- and told me that they were  
22 taking no position in the matter, no position.

23 I believe that the position being taken by  
24 Chunghwa is set forth in their letter to me of  
25 October 15th, which indicates that because the

1 plaintiffs asserted a work product privilege, that  
2 Chunghwa has informed the parties it does not intend  
3 to produce translations unless there is an agreement  
4 between counsel for the direct and indirect  
5 purchaser plaintiffs and Samsung or a ruling  
6 resolving the order, which, flip side, if you agree,  
7 they'll produce; if I rule, they'll produce. Okay?

8 Okay. Now, I received your letters. I  
9 think I understand everything that's in them. So do  
10 you want to add anything further to those letters,  
11 or do you just want to submit them?

12 MR. ALIOTO: On behalf of -- we want to  
13 submit two motions. There's a request for  
14 affirmative relief there.

15 SPECIAL MASTER LEGGE: Yes, I understand.

16 MR. ALIOTO: In the event your Honor makes  
17 a certain ruling, that we believe the reasoning  
18 would apply the other way around.

19 SPECIAL MASTER LEGGE: Okay.

20 MR. SCARBOROUGH: Well, your Honor, Mike  
21 Scarborough for the Samsung, SDI defendants, and all  
22 defendants on this motion.

23 In terms of the motion to get the Chunghwa  
24 translations, I think the papers speak to that.  
25 Plaintiffs have no ability to assert a work product

1 objection there. We explained why. There's  
2 multiple waivers.

3 SPECIAL MASTER LEGGE: No, don't argue it.

4 MR. SCARBOROUGH: Right.

5 SPECIAL MASTER LEGGE: Please don't.

6 MR. SCARBOROUGH: In terms of the  
7 cross-motion, it's not a cross-motion at all.

8 SPECIAL MASTER LEGGE: You've already  
9 taken -- you've taken a position on that too.

10 MR. SCARBOROUGH: Right. So we don't  
11 think there's any basis to rule on anything. But if  
12 your Honor were inclined to let them pursue this  
13 cross-motion, we could, of course, put in  
14 declarations saying any translations we have are  
15 work product. But frankly, a two-line throw-away at  
16 the end of an opposition brief saying: Oh, I  
17 cross --

18 SPECIAL MASTER LEGGE: You're arguing it  
19 now. Okay? You've already said it. So I'll submit  
20 it.

21 MR. RUSHING: Your Honor, I would just add  
22 one thing.

23 You have everything in our brief, but with  
24 regard to -- we asked for a document protocol, and I  
25 don't believe that you have all of that.

1           To the extent you are inclined to order  
2           the production of the translations, we would ask for  
3           an order that, as we just discussed, requires the  
4           defendants to give us their translations and,  
5           secondly, to establish a procedure that as the  
6           translations are used by each party, that there  
7           would be a procedure that after an appropriate --  
8           giving each side an appropriate amount of time to  
9           review the translations as they are used, object to  
10          them. And to the extent they object to them or  
11          not -- to the extent they object to them, provide an  
12          explanation of the objection and a competing kind of  
13          version of the document.

14                 SPECIAL MASTER LEGGE: That's new. I  
15           don't remember reading anything like that.

16                 MR. RUSHING: That's what I'm saying.  
17           That's why I talked about the protocol, and that is  
18           new.

19                 The problem that we had -- and if we want  
20           to get into it -- is that we need to establish a  
21           procedure to determine the extent to which the  
22           translations can be used in the case because --

23                 SPECIAL MASTER LEGGE: That's got nothing  
24           to do with whether they have to be produced or not  
25           to the defendants, the Chunghwa documents.

1 MR. RUSHING: Well, no, your Honor.

2 SPECIAL MASTER LEGGE: Production is one  
3 thing. Use it's going to be made of is another  
4 issue.

5 MR. RUSHING: Well, your Honor, I mean,  
6 it's our position that if they want -- they're  
7 asking for the benefit of our translations.

8 SPECIAL MASTER LEGGE: Right.

9 MR. RUSHING: They ought to be required --  
10 and we have attempted to engage them in discussions  
11 about this, a protocol about how translations, in  
12 general, will be used.

13 SPECIAL MASTER LEGGE: I understand that.  
14 It's a good idea. But I can't see how in any way  
15 that's contingent upon Chunghwa producing to them,  
16 if that's what I'm going to order, producing the  
17 documents.

18 MR. RUSHING: Well, I'll leave it at that,  
19 your Honor.

20 SPECIAL MASTER LEGGE: I agree with you.

21 MR. GUIDO SAVERI: I think what  
22 Mr. Rushing is trying to say is this, though he said  
23 it very well.

24 I negotiated the settlement agreement with  
25 Chunghwa. Okay? And part of that deal was our

1 getting the documents. That's what I paid for in  
2 getting my \$10 million. I paid for that. And  
3 there's a privilege there, and I don't think that  
4 Chunghwa can waive it. You've seen our papers. And  
5 they shouldn't. We paid for that, and we don't see  
6 why we should turn it over to the defendants.

7 SPECIAL MASTER LEGGE: I understand that  
8 position.

9 MR. GUIDO SAVERI: Okay. The other thing,  
10 though, and I'm not saying this in a way that would  
11 cause you to rule one way or the other because I  
12 think we don't have to turn over the documents.  
13 They have the documents. Whatever documents we  
14 have, they have. The documents --

15 SPECIAL MASTER LEGGE: You mean the  
16 Chinese ones?

17 MR. GUIDO SAVERI: Yes. They have them.  
18 They have all the documents. They have all the  
19 documents that were turned over by Chunghwa. They  
20 have everything.

21 SPECIAL MASTER LEGGE: No. They --

22 MR. GUIDO SAVERI: Except that they're  
23 not -- except that they're not --

24 SPECIAL MASTER LEGGE: They turned over  
25 translations to you.

1 MR. GUIDO SAVERI: Well, they can  
2 translate them themselves. They've got all the  
3 documents. They've got more than we have.

4 So if they have, let's say, 1000 documents  
5 and we have 500 and we translated them, they have  
6 the same documents. Let them translate them.

7 SPECIAL MASTER LEGGE: And don't we then  
8 get into a hassle about the accuracy of the two  
9 translations?

10 MR. GUIDO SAVERI: Yeah, but that's --

11 MR. R. ALEXANDER SAVERI: We're going to  
12 have that anyway, your Honor.

13 MR. GUIDO SAVERI: They have that anyway.  
14 But at least they have that stuff, and we can work  
15 that down in the future.

16 But why should we give them the  
17 translations that I paid for when they already have  
18 the documents and they probably translated them  
19 already.

20 They've got all those documents. They  
21 translated them. If not, they should be sued for  
22 malpractice. They've got every document that we  
23 have, and they've translated them.

24 And again, I'm saying, down the line we're  
25 going to have to work -- no matter how the ruling

1 is, we're going to have to work out some kind of a  
2 deal on how those translations ought to be used.  
3 Because that's the problem that we're having in LCD.

4 SPECIAL MASTER LEGGE: Yeah, but that's  
5 not my --

6 MR. GUIDO SAVERI: No, I understand that.

7 SPECIAL MASTER LEGGE: -- part of the  
8 decision on whether --

9 MR. GUIDO SAVERI: Right.

10 SPECIAL MASTER LEGGE: -- you get theirs  
11 or not.

12 MR. GUIDO SAVERI: I understand that.

13 SPECIAL MASTER LEGGE: They get yours or  
14 not.

15 MR. GUIDO SAVERI: I understand that. But  
16 at least it's background information --

17 SPECIAL MASTER LEGGE: No, I understand.

18 MR. GUIDO SAVERI: -- to know what's going  
19 to come up.

20 SPECIAL MASTER LEGGE: I've dealt with  
21 translations in the court a lot.

22 MR. GUIDO SAVERI: Not the way it's  
23 developed in LCD. It's a morass that's developed.  
24 And what's going on with -- you know, we have a  
25 document. They don't agree with it. We don't agree



1 with it. We'll set up a protocol and eliminate all  
2 that.

3 But on these documents -- I should reduce  
4 my voice. This is very important to me. I paid for  
5 this. And if I didn't get it, I would not have  
6 taken 10 million bucks. I would have taken more.  
7 So I bought that. That belongs to me. And I don't  
8 have to give it to them at my expense.

9 And I think that Chunghwa, they're not  
10 asserting, the fact they can't waive that privilege.  
11 We have the common interest, a brief that made  
12 clear, we shouldn't be giving -- they have all those  
13 documents. They can translate them themselves.

14 And when we use a document, if there's a  
15 problem with it, well, we'll see what document  
16 complies.

17 But again, I repeat, I'll repeat it three  
18 times, no reason I should turn these over. I bought  
19 it and paid for it. And we haven't waived any  
20 problem, we haven't waived any privilege or  
21 anything.

22 SPECIAL MASTER LEGGE: Okay. Submitted.

23 MR. GUIDO SAVERI: And they've got them  
24 all.

25 SPECIAL MASTER LEGGE: Submitted. But I'm

1 not going to deal with how to smooth out translation  
2 problems in this order because, first of all, we  
3 don't know if there are any translation problems.  
4 We don't know how they're going to arise.

5 If we end up with two sets of  
6 translations, there's bound to be some disputes.  
7 Even with only one set of translations, some  
8 document is going to come up -- it's inevitable --  
9 where one side or the other says: That was not an  
10 accurate translation. It's just inherent.

11 MR. GUIDO SAVERI: But we hope to avoid  
12 that, your Honor.

13 SPECIAL MASTER LEGGE: I know.

14 MR. GUIDO SAVERI: I think we have --

15 SPECIAL MASTER LEGGE: I appreciate that.

16 MR. GUIDO SAVERI: -- a procedure whereby  
17 we can avoid it.

18 SPECIAL MASTER LEGGE: I appreciate that.

19 MR. GUIDO SAVERI: Part of arriving at  
20 that procedure to avoid it is that we don't give  
21 them our documents because they have them already.

22 SPECIAL MASTER LEGGE: All right. I  
23 understand your position on the motion. You have  
24 articulated it very well. And I think Mr. Alioto's  
25 the one who wrote the brief on that. So it's all

1 set up.

2 Now, one final matter, at least final on  
3 my agenda, I had set a tentative date for a case  
4 management conference for November the 29th.

5 I don't see much purpose in that,  
6 particularly since you're going to be going through  
7 some meet-and-confer and particularly since now the  
8 stay order has been continued until March. I just  
9 don't know -- don't see any point, unless you folks  
10 can see some reason why we need to get together for  
11 case management matters as early as November 29th.

12 MR. KESSLER: I think, defendants, your  
13 Honor, agree with you that that date should be  
14 adjourned.

15 MR. R. ALEXANDER SAVERI: Your Honor, on  
16 behalf of plaintiffs, we agreed.

17 SPECIAL MASTER LEGGE: Okay.

18 MR. R. ALEXANDER SAVERI: We can continue  
19 that down the road and maybe get with your clerk and  
20 get an appropriate date later on, giving the  
21 continuance of the stay.

22 SPECIAL MASTER LEGGE: Okay. All right.

23 All right, then. Anything else for the  
24 good of the order?

25 MR. R. ALEXANDER SAVERI: Nothing further

1 from the plaintiffs, your Honor.

2 SPECIAL MASTER LEGGE: All right. Thank  
3 you very much. The meeting is now adjourned.

4 (Whereupon the proceedings were  
5 adjourned at 5:38 p.m.)  
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CERTIFICATE OF REPORTER

I, ANA M. DUB, a Certified Shorthand Reporter,  
Registered Merit Reporter, and Certified Realtime  
Reporter, hereby certify that the foregoing  
proceedings were taken in shorthand by me, at the  
time and place therein stated, and that the said  
proceedings were thereafter reduced to typewriting,  
by computer, under my direction and supervision;

I further certify that I am not of counsel or  
attorney for either or any of the parties nor in any  
way interested in the event of this cause, and that  
I am not related to any of the parties thereto.

Dated: November 29, 2010.

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ANA M. DUB, RMR, CRR, CSR NO. 7445